

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/1. INTRODUCTION/(1) SCOPE OF THE TITLE/1. Scope of the title.

LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)

Notes on the Finance Act 2009 have been contributed by David R Harris, LL.M., of Lincoln's Inn, Barrister.

1. INTRODUCTION

(1) SCOPE OF THE TITLE

1. Scope of the title.

This title is concerned with:

- 1 (1) regulation of the sale and supply of alcohol and the provision of regulated entertainment and late-night refreshment¹;
- 2 (2) regulation of gambling², including the National Lottery³ and particular provisions relating to horseracing⁴;
- 3 (3) the taxation of gambling⁵;
- 4 (4) the duties, rights and liabilities of certain hotel proprietors⁶;
- 5 (5) particular provisions relating to theatres, cinemas and films, video recordings and sound recordings⁷;
- 6 (6) statutory powers to control raves⁸ and demonstrations of hypnotism⁹; and
- 7 (7) the licensing of sex establishments¹⁰.

Except in so far as they fall within heads (1) to (3) above, sports and sporting entertainments do not fall within the scope of this title; nor does broadcasting¹¹. Excise duties on alcohol are discussed elsewhere in this work¹², as are a number of criminal offences in relation to drunkenness¹³. Other types of licensing also fall outside the scope of this title, for example the licensing of activities under the Private Security Industry Act 2001¹⁴, the licensing of taxis¹⁵ and the approval of venues for civil weddings and civil partnerships¹⁶.

1 The matters mentioned in head (1) in the text fall within the Licensing Act 2003: see PARA 26 et seq.

2 As to the regulation of gambling generally see the Gambling Act 2005; and PARA 330 et seq; as to the Gambling Commission see PARAS 4-5; and as to the Gambling Appeals Tribunal see PARA 6.

3 As to the National Lottery see PARA 686 et seq; and as to the National Lottery Commission see PARA 7.

4 See PARAS 9-18.

5 See PARA 744 et seq.

6 See PARA 183 et seq.

- 7 See PARA 234 et seq.
- 8 See PARAS 297-298.
- 9 See PARAS 299-300.
- 10 See PARA 301 et seq.
- 11 As to broadcasting see generally **TELECOMMUNICATIONS AND BROADCASTING**.
- 12 See **CUSTOMS AND EXCISE** vol 12(1) (2007 Reissue) PARA 398 et seq.
- 13 As to alcohol consumption in designated public places see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 577; as to persons found drunk and disorderly see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 596; as to alcohol on vehicles see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 597-598; as to alcohol at sporting events see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 599; and as to road traffic offences involving the consumption of alcohol see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 974 et seq.
- 14 As to regulation of the private security industry see **TRADE AND INDUSTRY** vol 97 (2010) PARA 887 et seq.
- 15 As to taxis and private hire vehicles see **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1431 et seq.
- 16 See the Marriages and Civil Partnerships (Approved Premises) Regulations 2005, SI 2005/3168; and **MATRIMONIAL AND CIVIL PARTNERSHIP LAW** vol 72 (2009) PARA 190 et seq.

UPDATE

1-18 Scope of the title ... Betting levy appeal tribunals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(2) REGULATORY AUTHORITIES AND OTHER BODIES

(i) The Secretary of State and Licensing Authorities

2. The Secretary of State.

Certain functions under the Licensing Act 2003¹, the Gambling Act 2005² and other relevant legislation are exercised by the Secretary of State. In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State³. In law each Secretary of State is generally capable of performing the statutory functions of all or any of them, except where any such functions are vested in the Welsh Ministers or the Scottish Ministers⁴.

Functions of the Secretary of State under the Licensing Act 2003, the Gambling Act 2005 and the other legislation discussed in this title are, at the date at which this volume states the law, generally exercisable by the Secretary of State for Culture, Media and Sport⁵. Functions under the National Lottery etc Act 1993 with regard to devolved expenditure in Wales⁶ are, however, exercisable either by the Welsh Ministers or by the Secretary of State with the agreement of those ministers⁷; and the functions of the Secretary of State under Part 3 of the Horserace Betting and Olympic Lottery Act 2004⁸ may be exercised by the Paymaster General⁹ or concurrently with him¹⁰.

The Secretary of State must issue guidance ('the licensing guidance') to licensing authorities¹¹ on the discharge of their functions under the Licensing Act 2003¹² and may, from time to time, revise the licensing guidance¹³. He must arrange for any guidance so issued or revised to be published in such manner as he considers appropriate¹⁴. There is no parallel duty under the Gambling Act 2005; guidance to local authorities under that Act is issued by the Gambling Commission¹⁵.

The Secretary of State's other relevant functions, powers and duties are discussed below in the context in which they arise. He has, for example:

- 8 (1) powers to appoint the members of a number of statutory bodies¹⁶;
- 9 (2) prospective powers to dissolve certain bodies and provide for the transfer of their property, rights and liabilities¹⁷;
- 10 (3) power to arrange for certain registration duties of licensing authorities to be discharged by means of one or more central registers kept by a person appointed pursuant to the arrangements¹⁸;
- 11 (4) powers and duties to make regulations and orders about a number of relevant matters¹⁹;
- 12 (5) power to give financial assistance in connection with the production of films²⁰;
- 13 (6) power to certify a film as a British film for the purposes of film tax relief²¹;
- 14 (7) power to designate a person or persons to issue classification certificates for video works²²;
- 15 (8) power to give directions²³ and issue codes of practice²⁴;
- 16 (9) control and management of the National Lottery Distribution Fund²⁵ and the Olympic Lottery Distribution Fund²⁶;
- 17 (10) power to instruct the distributing bodies for the purposes of the National Lottery to prepare and adopt strategic plans²⁷;

- 1 As to the Licensing Act 2003 see PARA 26 et seq.
- 2 As to the Gambling Act 2005 see PARA 330 et seq.
- 3 See the Interpretation Act 1978 s 5, Sch 1.
- 4 See generally **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355.
- 5 For an exception see PARA 24 note 9 (functions in relation to the Film Industry Training Board for England and Wales). See also the text and notes 6-10. For current ministerial responsibilities see the websites of the government departments concerned and the Civil Service Yearbook.
- 6 As to the meaning of 'devolved expenditure' for these purposes see PARA 721.
- 7 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 5, Schs 1, 2.
- 8 The functions under the Horserace Betting and Olympic Lottery Act 2004 Pt 3 (ss 21-37, Sch 4): see PARA 688 note 4; and PARAS 697-698, 717 et seq.
- 9 See the Horserace Betting and Olympic Lottery Act 2004 s 34(1), (2)(aa) (added by SI 2007/2129); and PARA 688. As to the Paymaster General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 714.
- 10 See the Transfer of Functions (Olympics and Paralympics) Order 2007, SI 2007/2129, art 3(2)(a)(i).
- 11 As to the licensing authorities see PARA 3.
- 12 Licensing Act 2003 s 182(1). The Secretary of State may not, however, issue the licensing guidance unless a draft of it has been laid before, and approved by resolution of, each House of Parliament: s 182(2). As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance so issued by the Secretary of State: see s 4; and PARA 35.
- 13 Licensing Act 2003 s 182(3). A revised version of the licensing guidance does not come into force until the Secretary of State lays it before Parliament: s 182(4). Where either House, before the end of the period of 40 days beginning with the day on which a revised version of the licensing guidance is laid before it, by resolution disapproves that version: (1) the Secretary of State must, under s 182(3), make such further revisions to the licensing guidance as appear to him to be required in the circumstances; and (2) before the end of the period of 40 days beginning with the date on which the resolution is made, lay a further revised version of the licensing guidance before Parliament: s 182(5). In reckoning any period of 40 days for these purposes, no account is to be taken of any time during which Parliament is dissolved or prorogued, or both Houses are adjourned for more than four days: s 182(6).
- 14 Licensing Act 2003 s 182(7). The Department for Culture, Media and Sport issued revised guidance on 28 June 2007: see *Revised Guidance issued under section 182 of the Licensing Act 2003* (28 June 2007, Department for Culture, Media and Sport). That guidance is published on the department's website, accessible at the date at which this volume states the law at www.culture.gov.uk. Guidance to police officers on the use of closure powers in the 2003 Act to deal with disorder or noise nuisance problems on premises (as to which see PARA 168 et seq), which was previously part of the guidance under s 182 issued on 7 July 2004, is now available separately: see *Police Powers to Close Premises under the Licensing Act 2003* (28 June 2007, Department for Culture, Media and Sport). As to the status of such guidance see 642 HL Official Report (5th series), 17 December 2002, col 629.
- 15 See the Gambling Act 2005 s 25; and PARA 338. As to the Gambling Commission see PARAS 4-5.
- 16 See eg the Gambling Act 2005 Sch 4 para 1 (appointment of chairman and members of the Gambling Commission); and PARA 4; the National Lottery etc Act 1993 Sch 2A para 2(1) (appointment of members of the National Lottery Commission); and PARA 7; the Betting, Gaming and Lotteries Act 1963 s 12 (appointment of chairman and members of the Horserace Totalisator Board); and PARA 9; s 24(2)(a) (appointment of chairman and two members of the Horserace Betting Levy Board); and PARA 12; the Theatres Trust Act 1976 Schedule para 1 (appointment of members, chairman and deputy chairman of the Theatres Trust); and PARA 21; the National Lottery Act 1998 Sch 4 para 1(1) (appointment of NESTA trustees); and PARA 739.
- 17 See eg the Horserace Betting and Olympic Lottery Act 2004 s 1 (not yet in force) (prospective dissolution of the Horserace Totalisator Board); and PARA 9; s 15(1) (not yet in force) (power to abolish the horserace betting levy system and provide for the dissolution of the Horserace Betting Levy Board); and PARA 12.

- 18 See the Licensing Act 2003 s 8(6); and PARA 37.
- 19 See eg:
- 1 (1) the following provisions of the Licensing Act 2003, ie s 183; and PARA 43; ss 54, 55; and PARA 53; s 176(3); and PARA 57; s 51(3); and PARA 79; s 53A(3); and PARA 81; s 172; and PARA 84; s 78; and PARA 91; s 92(2); and PARA 94; s 84(4); and PARA 101; s 87(3); and PARA 103; s 100(4); and PARA 108; s 107(12); and PARA 110;
 - 2 (2) the Criminal Justice and Public Order Act 1994 s 67; and PARA 297;
 - 3 (3) the following provisions of the Gambling Act 2005, ie s 4(3); and PARA 308; s 5(4); and PARA 309; s 6(6); and PARA 310; s 7(3); and PARA 311; s 38(3); and PARA 314; s 14(7); and PARA 317; s 349(4); and PARA 344; s 65(4); and PARA 349; s 66(2); and PARA 352; s 78(1); and PARA 358; s 91(1); and PARA 370; s 100; and PARA 379; s 103(1); and PARA 385; s 123(1); and PARA 399; s 128; and PARA 402; s 132(2); and PARA 417; s 151(2); and PARA 463; s 166(7); and PARA 465; s 156(4); and PARA 469; s 167(1); and PARA 484; s 180(2); and PARA 494; s 182(4); and PARA 498; s 174(6), (7); and PARA 505; s 175(4); and PARA 506; s 191(1); and PARA 522; s 215(2); and PARA 535; s 235; and PARA 547; s 266; and PARA 578; s 317(4); and PARA 612; ss 38(1), 40(2); and PARA 616; s 47(3); and PARA 622; s 59(1); and PARA 633; s 248(2); and PARA 654; Sch 11 paras 57-60; and PARA 664; s 341(7); and PARA 682;
 - 4 (4) the National Lottery Act 2006 s 6(1); and PARA 687;
 - 5 (5) the National Lottery etc Act 1993 s 6A(2) (not yet in force); and PARA 695; s 12; and PARA 709; and
 - 6 (6) the Horserace Betting and Olympic Lottery Act 2004 s 35(1); and PARA 697; s 28(1); and PARA 720.
- 20 See the Films Act 1985 s 5; and PARA 261.
- 21 See the Films Act 1985 Sch 1; and PARA 265.
- 22 See the Video Recordings Act 1984 s 4; and PARA 279.
- 23 See eg:
- 7 (1) the Gambling Act 2005 s 32(2) (directions to the Gambling Commission); and PARA 341;
 - 8 (2) the National Lottery etc Act 1993 ss 4A(2), 11 (directions to the National Lottery Commission); and PARAS 708, 689; s 26(1), (3A), (6) (directions to the distributing bodies); and PARAS 726, 723; s 36E(1) (directions to the Big Lottery Fund); and PARA 734; and
 - 9 (3) the National Lottery Act 1998 s 21(1) (directions to NESTA); and PARA 742.
- 24 See eg the Gambling Act 2005 Sch 9 para 6; and PARA 507.
- 25 See the National Lottery etc Act 1993 s 21(1); and PARA 713.
- 26 See the Horserace Betting and Olympic Lottery Act 2004 s 23; and PARA 717. Such control and management may be exercised alternatively by, or concurrently with, the Paymaster General: see the text and notes 9-10.
- 27 See the National Lottery etc Act 1993 s 25C(1); and PARA 725.

UPDATE

1-18 Scope of the title ... Betting levy appeal tribunals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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3. Licensing authorities.

For the purposes of the Licensing Act 2003¹, 'licensing authority' means:

- 18 (1) the council of a district in England²;
- 19 (2) the council of a county in England in which there are no district councils;
- 20 (3) the council of a county or county borough in Wales³;
- 21 (4) the council of a London borough⁴;
- 22 (5) the Common Council of the City of London⁵;
- 23 (6) the Sub-Treasurer of the Inner Temple;
- 24 (7) the Under-Treasurer of the Middle Temple; or
- 25 (8) the Council of the Isles of Scilly⁶,

and a licensing authority's area is the area for which the authority acts⁷.

The bodies mentioned in heads (1) to (5) and (8) above are also licensing authorities for the purposes of the Gambling Act 2005⁸. Additionally, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple are licensing authorities for the purposes of issuing licensed premises gaming machine permits⁹ under the 2005 Act¹⁰.

The functions of licensing authorities under those Acts are discussed in later parts of this title in the contexts in which they arise. They have a more limited role under the Gambling Act 2005 than under the Licensing Act 2003, since many of the functions relating to the licensing of gambling under the 2005 Act are exercised by the Gambling Commission¹¹.

1 As to the commencement of the Licensing Act 2003 and transitional provisions see PARA 26.

2 As to local government areas and authorities in England see **LOCAL GOVERNMENT** vol 69 (2009) PARA 24 et seq.

3 As to local government areas and authorities in Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 37 et seq.

4 As to the London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 30, 35 et seq.

5 I.e. the mayor, aldermen and commons of the City of London in common council assembled: see the City of London (Various Powers) Act 1958 s 5; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 51 et seq.

6 Licensing Act 2003 s 3(1). As to the Council of the Isles of Scilly see **LOCAL GOVERNMENT** vol 69 (2009) PARA 36.

As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182, as well as their own statement of licensing policy: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

7 Licensing Act 2003 s 3(2).

8 See the Gambling Act 2005 s 2(1)(a), (b).

9 I.e. for the purposes of the Gambling Act 2005 Sch 13: see PARAS 571-577.

10 See the Gambling Act 2005 s 2(2). As to the delegation of functions to licensing committees and sub-committees see PARAS 466-468, 536-538, 563 note 7, 571 note 4, 584 note 3, 594 note 2.

11 As to the Gambling Commission see PARAS 4-5; and as to its functions, powers and duties see PARA 335 et seq.

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(ii) Bodies concerned with Gambling

A. THE GAMBLING COMMISSION

4. Establishment, constitution and procedure of the Gambling Commission.

There is a body corporate known as the Gambling Commission ('the Commission')¹. The Commission consists of a chairman and other commissioners appointed by the Secretary of State². Subject to the following provisions, the chairman and a commissioner hold and vacate office in accordance with the terms of their appointment³. The Secretary of State may not appoint a person as commissioner for a period of more than five years, or for periods, whether or not consecutive, exceeding ten years in aggregate⁴. The chairman and a commissioner may resign by notice in writing to the Secretary of State⁵. If the Secretary of State thinks that a commissioner is unable, unfit or unwilling to perform his functions, the Secretary of State may dismiss the commissioner⁶. If the chairman ceases to be a commissioner, he must also cease to be chairman⁷.

The Commission may, with the Secretary of State's consent⁸ as to terms and conditions of employment, appoint a chief executive⁹. A person may hold appointment both as the chief executive and as a commissioner, but may not hold appointment both as the chief executive and as the chairman¹⁰. Where a person holds appointment both as the chief executive and as a commissioner, then if he ceases to be the chief executive he must also cease to be a commissioner¹¹. The Commission may also, with the Secretary of State's consent as to terms and conditions of employment, appoint other staff¹².

The Commission must determine arrangements for the conduct of its proceedings, which may, in particular, include arrangements for a quorum, and must publish those arrangements¹³. It may delegate a function¹⁴ to a commissioner, to a committee consisting of commissioners, or to an employee of the Commission¹⁵.

The Commission may, with the consent of the Secretary of State, pay to or in respect of a commissioner or employee sums by way of or in respect of remuneration, allowances, expenses, pension or gratuity¹⁶.

The Secretary of State may make payments to the Commission for the purpose of enabling the Commission to meet such of its expenses as cannot be met out of fees paid to it under the Gambling Act 2005¹⁷. The Commission may, with the consent of the Secretary of State, borrow money¹⁸ and may pay money into the Consolidated Fund¹⁹. The Commission must keep accounting records in such form as the Secretary of State may direct²⁰ and must prepare a statement of accounts for each financial year²¹ in such form as the Secretary of State may direct²². The Commission must send a copy of that statement of accounts to the Secretary of State and to the Comptroller and Auditor General²³, within such period, beginning with the end of the financial year to which the accounts relate, as the Secretary of State may specify²⁴. The Comptroller and Auditor General must examine a statement so sent to him, report on it and lay a copy of his report before Parliament²⁵.

As soon as is reasonably practicable after the end of each financial year the Commission must send to the Secretary of State a report about the activities of the Commission during the year²⁶.

Where the Secretary of State receives such a report he must lay a copy before Parliament and he may arrange for the report to be published²⁷.

The Commission is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown²⁸. Property of the Commission is not to be regarded as property of or held on behalf of the Crown²⁹ and membership of or employment by the Commission is not employment in the civil service of the state³⁰.

The Welsh Language Board may require the Commission to produce a Welsh language scheme under Part II³¹ of the Welsh Language Act 1993³².

1 Gambling Act 2005 s 20(1).

2 Gambling Act 2005 Sch 4 para 1. As to the Secretary of State see PARA 2.

The persons who immediately before 1 October 2005 (ie the date when s 21 came into force: see PARA 5) were the members of the Gaming Board for Great Britain are treated as if on that date they were appointed as commissioners of the Commission (s 21(3)); and the person who immediately before that date was the chairman of that Board is treated as if on that date he were appointed as the chairman of the Commission (s 21(4)). The persons who are to be so treated are, subject to the Gambling Act 2005 (Commencement No 2 and Transitional Provisions) Order 2005, SI 2005/2455, art 3(3), to be treated as if they had been so appointed on the same terms as they were appointed as members or, as the case may be, as chairman of the Gaming Board: art 3(1), (2). Each such commissioner or chairman holds office for a period beginning on 1 October 2005 and ending on the date on which immediately before 1 October 2005 his appointment as a member or chairman of the Gaming Board was due to come to an end: art 3(3). As to the Gaming Board for Great Britain see the Gaming Act 1968 s 10, Sch 1 (repealed).

3 Gambling Act 2005 Sch 4 paras 2(1), 3(a).

4 Gambling Act 2005 Sch 4 para 4.

5 Gambling Act 2005 Sch 4 paras 2(2), 3(b).

6 Gambling Act 2005 Sch 4 para 2(3).

7 Gambling Act 2005 Sch 4 para 3(c).

8 Consent given by the Secretary of State for the purposes of the Gambling Act 2005 Sch 4 may be general or specific: Sch 4 para 18.

9 Gambling Act 2005 Sch 4 para 5(1).

10 Gambling Act 2005 Sch 4 para 5(2).

11 Gambling Act 2005 Sch 4 para 5(3).

12 Gambling Act 2005 Sch 4 para 6.

13 Gambling Act 2005 Sch 4 para 7.

14 This power of delegation applies to any function of the Commission including, in particular (1) a discretionary function; (2) the function of conducting a review; (3) the function of determining whether to revoke a licence or of determining whether to impose a requirement to pay a penalty: Gambling Act 2005 Sch 4 para 8(2). As to the functions of the Commission see PARA 335 et seq.

15 Gambling Act 2005 Sch 4 para 8(1).

16 Gambling Act 2005 Sch 4 para 9.

17 Gambling Act 2005 Sch 4 para 10.

18 Gambling Act 2005 Sch 4 para 11.

19 Gambling Act 2005 Sch 4 para 12.

20 Gambling Act 2005 Sch 4 para 13.

21 The financial year of the Commission is the period of 12 months ending with 31 March (Gambling Act 2005 Sch 4 para 15(1)); but the first financial year of the Commission was the period beginning with 1 October 2005 (ie the commencement of s 20: see the Gambling Act 2005 (Commencement No 2 and Transitional Provisions) Order 2005, SI 2005/2455, art 2(1), Schedule) and ending with 31 March 2006 (Gambling Act 2005 Sch 4 para 15(2)).

22 Gambling Act 2005 Sch 4 para 14(1).

23 Gambling Act 2005 Sch 4 para 14(2).

24 Gambling Act 2005 Sch 4 para 14(3).

25 Gambling Act 2005 Sch 4 para 14(4).

26 Gambling Act 2005 Sch 4 para 16(1).

27 Gambling Act 2005 Sch 4 para 16(2).

28 Gambling Act 2005 Sch 4 para 17(1).

29 Gambling Act 2005 Sch 4 para 17(2).

30 Gambling Act 2005 Sch 4 para 17(3).

31 Ie under the Welsh Language Act 1993 Pt II (ss 5-21).

32 See the Welsh Language Schemes (Public Bodies) Order 2008, SI 2008/1890, art 2, Schedule.

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1-18 Scope of the title ... Betting levy appeal tribunals

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4 Establishment, constitution and procedure of the Gambling Commission

NOTE 32--See also the Welsh Language Schemes (Public Bodies) Order 2008, SI 2008/1890, art 2, Schedule.

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5. Transfer of functions, property etc of the Gaming Board for Great Britain to the Gambling Commission.

On 1 October 2005¹ the functions, rights and liabilities of the Gaming Board for Great Britain ('the Board')² became functions, rights and liabilities of the Gambling Commission ('the Commission')³.

Anything done by or in relation to the Board which had effect immediately before 1 October 2005 has effect, so far as necessary for continuing its effect after that date, as if done by or in relation to the Commission⁴; and anything, including any legal proceedings, which immediately before that date was in the process of being done by or in relation to the Board may be continued by or in relation to the Commission⁵.

So far as necessary or appropriate⁶, on and after 1 October 2005 a reference to the Board in an enactment, instrument or other document is to be treated as a reference to the Commission⁷.

1 I.e. on commencement, which means the coming into force of the Gambling Act 2005 s 21: see s 21(2), (5); and the Gambling Act 2005 (Commencement No 2 and Transitional Provisions) Order 2005, SI 2005/2455, art 2(1), Schedule.

2 As to the Gaming Board for Great Britain see the Gaming Act 1968 s 10, Sch 1 (repealed).

3 Gambling Act 2005 s 21(2). As to the Gambling Commission see PARA 4.

Section 21(2) operates in relation to rights and liabilities, whether or not they would otherwise be capable of being transferred by the Board, and without any instrument or other formality being required: Sch 5 paras 1, 5(1). In so far as s 21(2) transfers to the Commission liabilities under contracts of employment, nothing in s 21 or Sch 5 affects the operation of the Transfer of Undertakings (Protection of Employment) Regulations 1981, SI 1981/1794 (revoked) or the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246: see the Gambling Act 2005 Sch 5 para 5(2). As to those regulations (commonly known as the 'TUPE' regulations) see **EMPLOYMENT** vol 39 (2009) PARA 110 et seq.

4 Gambling Act 2005 Sch 5 para 2.

5 Gambling Act 2005 Sch 5 para 3.

6 I.e. in consequence of the Gambling Act 2005 s 21: see the text and notes 1-3; and PARA 4 note 2.

7 Gambling Act 2005 Sch 5 para 4.

UPDATE

1-18 Scope of the title ... Betting levy appeal tribunals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/1. INTRODUCTION/(2) REGULATORY AUTHORITIES AND OTHER BODIES/(ii) Bodies concerned with Gambling/B. THE GAMBLING APPEALS TRIBUNAL/6. The Gambling Appeals Tribunal.

B. THE GAMBLING APPEALS TRIBUNAL

6. The Gambling Appeals Tribunal.

There is a tribunal known as the Gambling Appeals Tribunal ('the Tribunal')¹. The Lord Chancellor must appoint a president and other members of the Tribunal², and may appoint one or more members of the Tribunal as deputy president³. A deputy president may act for the president when he is unable to act or unavailable, and must perform such other functions as the president may delegate or assign to him⁴. A person appointed under the above provisions holds and vacates office in accordance with the terms of his appointment and subject to the following provisions⁵. Such a person may resign by notice in writing to the Lord Chancellor⁶. With, and only with, the concurrence of the appropriate senior judge⁷, the Lord Chancellor may dismiss such a person on the grounds that the person is unable or unwilling to perform his functions, or on the grounds of misbehaviour⁸. The retirement provisions of the Judicial Pensions and Retirement Act 1993 apply to the president and other members of the Tribunal⁹ and the president is eligible for a judicial pension¹⁰.

The Lord Chancellor may appoint staff for the Tribunal¹¹ and may pay sums to or in respect of a person appointed by him as president, member or staff by way of or in respect of remuneration, expenses and allowances¹². He may also incur expenditure in respect of the Tribunal¹³.

The Tribunal sits at such times and in such places as the president may direct in accordance with general arrangements made by the Lord Chancellor¹⁴. It may sit in more than one place at a time¹⁵. At each sitting the Tribunal may consist of either the president, a member, or the president sitting with two other members¹⁶. The constitution of the Tribunal at each sitting must be determined by the president, and in accordance with general arrangements made by the Lord Chancellor¹⁷; and the arrangements may, in particular, include provision for a three-member tribunal to continue with one or two members in specified circumstances and for the president to have a casting vote if sitting, by virtue of such provision, with one other member¹⁸.

The procedure before the Tribunal is discussed in a later part of this title¹⁹, as are rights of appeal²⁰ and the fees for bringing an appeal²¹.

The Tribunal is under the general supervision of the Administrative Justice and Tribunals Council²².

The Lord Chancellor may by order provide for a function of the Tribunal to be transferred to certain other tribunals under the Tribunals, Courts and Enforcement Act 2007²³. At the date at which this volume states the law, no such order had been made.

1 Gambling Act 2005 s 140(1).

2 Gambling Act 2005 Sch 8 para 1(1). A person may be appointed under Sch 8 para 1 only if (1) he satisfies the judicial-appointment eligibility condition on a five-year basis; (2) he is an advocate or solicitor in Scotland of at least five years' standing; or (3) he is a barrister or solicitor in Northern Ireland of at least five years' standing: Gambling Act 2005 Sch 8 para 2 (amended by the Tribunals, Courts and Enforcement Act 2007 Sch 10 Pt 1 para 43(1)-(3)). As to the judicial-appointment eligibility condition see the Tribunals, Courts and Enforcement Act 2007 s 50.

The president is barred from legal practice: see the Gambling Act 2005 Sch 8 para 17. All members are disqualified for membership of the House of Commons: see Sch 8 para 16.

3 Gambling Act 2005 Sch 8 para 1(2).

4 Gambling Act 2005 Sch 8 para 1(2)(a), (b).

5 Gambling Act 2005 Sch 8 para 3(1).

6 Gambling Act 2005 Sch 8 para 3(2).

7 See the Gambling Act 2005 Sch 8 para 3(3A) (Sch 8 para 3(3A)-(3D) added by SI 2006/1016). The appropriate senior judge is the Lord Chief Justice of England and Wales, unless the person to be dismissed exercises functions wholly or mainly in Scotland, in which case it is the Lord President of the Court of Session: Gambling Act 2005 Sch 8 para 3(3B) (as so added). The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4)) to exercise any of his functions under the Gambling Act 2005 Sch 8 para 3 (Sch 8 para 3(3C) (as so added)); and the Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that court to exercise his functions under Sch 8 para 3 (Sch 8 para 3(3D) (as so added)).

8 Gambling Act 2005 Sch 8 para 3(3).

9 See the Gambling Act 2005 Sch 8 para 3(4).

10 See the Gambling Act 2005 Sch 8 para 6.

11 Gambling Act 2005 Sch 8 para 4.

12 Gambling Act 2005 Sch 8 para 5.

13 Gambling Act 2005 Sch 8 para 7.

14 Gambling Act 2005 Sch 8 para 9(1)(a). The Lord Chancellor must consult the president before making such arrangements and must publish the arrangements: Sch 8 para 11.

15 Gambling Act 2005 Sch 8 para 9(1)(b). Rules made by the Lord Chancellor under s 146 (see PARA 438) must, in particular, make provision for determining whether a case is to be heard by the Tribunal sitting in England or Wales, or in Scotland: Sch 8 para 9(2).

16 Gambling Act 2005 Sch 8 para 10(1).

17 Gambling Act 2005 Sch 8 para 10(2). The Lord Chancellor must consult the president before making such arrangements and must publish the arrangements: Sch 8 para 11.

18 Gambling Act 2005 Sch 8 para 10(3).

19 See PARAS 438, 440 et seq.

20 See PARA 434.

21 See PARA 439.

22 See the Tribunals and Inquiries Act 1992 Sch 1 Pt I para 21C (added by the Gambling Act 2005 Sch 8 para 15; amended by virtue of the Tribunals, Courts and Enforcement Act 2007 ss 44, 45). As to the Administrative Justice and Tribunals Council (which replaces the Council on Tribunals) see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 56 et seq.

23 See the Tribunals, Courts and Enforcement Act 2007 ss 30, 36, Sch 6 Pt 3.

UPDATE

1-18 Scope of the title ... Betting levy appeal tribunals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/1. INTRODUCTION/(2) REGULATORY AUTHORITIES AND OTHER BODIES/(ii) Bodies concerned with Gambling/C. THE NATIONAL LOTTERY COMMISSION ETC/7. The National Lottery Commission.

C. THE NATIONAL LOTTERY COMMISSION ETC

7. The National Lottery Commission.

The National Lottery Commission ('the Commission') has been established as a body corporate¹. It is within the capacity of the Commission as a body corporate created by statute to do such things and enter into such transactions as are incidental or conducive to the discharge of its functions under the National Lottery etc Act 1993². It is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown³, the members and employees of the Commission are not to be regarded as civil servants and the Commission's property is not to be regarded as property of, or held on behalf of, the Crown⁴. The Commission may for the purpose of enabling it to exercise its functions acquire and dispose of land⁵.

The Commission must consist of at least five members appointed by the Secretary of State⁶. Before appointing a person to be a member, the Secretary of State must satisfy himself that that person will have no such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member⁷. Any person who is, or whom the Secretary of State proposes to appoint to be, a member must, whenever requested by the Secretary of State to do so, furnish him with such information as the Secretary of State considers necessary for the performance by him of this duty⁸.

Members hold and vacate office in accordance with their terms of appointment, subject to the following provisions⁹. Any appointment of a member must be for a term no longer than five years¹⁰. A member may resign his membership by giving written notice to the Secretary of State¹¹. A person who ceases to be a member is eligible for re-appointment¹². The Secretary of State may by notice in writing to the member concerned remove from office a member who has been absent from three or more consecutive meetings of the Commission without prior approval, has become bankrupt, has made an arrangement with his creditors, has had his estate sequestrated, has granted a trust deed for his creditors or has made a composition contract with his creditors, or is, in the opinion of the Secretary of State, unable or unfit to perform his duties as a member¹³.

The Secretary of State must appoint a member of the Commission as chairman¹⁴. A member of the Commission who is also an employee of the Commission may not be appointed as chairman¹⁵. The chairman is to hold and vacate office in accordance with the terms of his appointment¹⁶; but if he ceases to be a member he must cease to be chairman¹⁷. Any appointment of a chairman must be for a term no longer than five years¹⁸. A chairman may resign his office by giving written notice to the Secretary of State¹⁹. A person who ceases to be chairman is eligible for re-appointment²⁰. The Secretary of State may by notice in writing to the chairman remove him from office if he has been absent from three or more consecutive meetings of the Commission without prior approval, has become bankrupt, has made an arrangement with his creditors, has had his estate sequestrated, has granted a trust deed for his creditors or has made a composition contract with his creditors, or is, in the opinion of the Secretary of State, unable or unfit to perform his duties as chairman²¹.

The Commission may pay such remuneration, and such travelling and other allowances, to a member of the Commission as the Secretary of State may determine in the case of the member²². Where the Secretary of State so determines in the case of a member of the

Commission, the Commission must pay to or in respect of him such pension, allowances or gratuities, or make such payments towards the provision of a pension, allowances or gratuities to or in respect of him, as the Secretary of State may determine²³. If the Secretary of State determines that there are special circumstances that make it right for a person ceasing to be a member of the Commission to receive compensation, the Commission may pay to him such compensation as the Secretary of State may determine²⁴.

There is a chief executive of the Commission, appointed by the Commission as its employee²⁵. The chief executive is responsible to the Commission for the general exercise of the Commission's functions²⁶. Subject to any directions²⁷ given to it by the Secretary of State with respect to the number of persons who may be employed by the Commission, the Commission may appoint such other employees as it thinks fit²⁸. Subject to any directions given to the Commission by the Secretary of State, the chief executive and any other employees are to be employed on such terms and conditions (including terms and conditions as to remuneration) as the Commission thinks fit²⁹. The Secretary of State may appoint the chief executive of the Commission as a member³⁰. Where the chief executive is appointed as a member, then if he ceases to be chief executive he ceases to be a member³¹. Where the chief executive is appointed as a member the Secretary of State may, on the recommendation of the Commission, appoint another employee of the Commission as a member³². The Secretary of State may suspend or terminate an appointment so made if the chief executive ceases to be a member³³, and if a person so appointed ceases to be an employee of the Commission he ceases to be a member³⁴.

The Commission regulates its own procedure and that of any of its committees (and in particular may specify a quorum for meetings)³⁵. The validity of any proceedings of the Commission is not affected by any vacancy among the members or in the office of chairman, or by any defect in the appointment or selection of any person as a member or as chairman of the Commission³⁶.

Anything authorised or required by or under any enactment to be done by the Commission may be done:

- 26 (1) by any member or employee of the Commission who has been authorised for the purpose, whether generally or specially, by the Commission; or
- 27 (2) by any committee of the Commission which has been so authorised and whose membership consists of members of the Commission, or one or more members of the Commission and one or more employees of the Commission³⁷.

It is the duty of the Commission to give to any person affected a written statement of its reasons for any decisions which it may make in the exercise of its functions³⁸.

Any expenditure of the Commission is defrayed out of money provided by Parliament³⁹. The Commission must keep proper accounts and proper records in relation to the accounts, and prepare a statement of accounts in respect of each financial year⁴⁰. The statement must comply with any directions that may be given by the Secretary of State as to the information to be contained in such a statement, the manner in which such information is to be presented or the methods and principles according to which such a statement is to be prepared⁴¹. Copies of the statement must be sent to the Secretary of State and the Comptroller and Auditor General within such period after the end of the financial year to which the statement relates as the Secretary of State may direct⁴². The Comptroller and Auditor General must examine, certify and report on the statement and must lay copies of the statement and of his report before Parliament⁴³.

The application of the seal of the Commission must be authenticated by the signature of any member of the Commission, or of any other person who has been authorised by the Commission (whether generally or specially) for that purpose⁴⁴. A document purporting to be

duly executed under the seal of the Commission, or to be signed on behalf of the Commission, is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed⁴⁵.

As soon as possible after the end of every financial year⁴⁶, the Commission is required to make a report on the exercise of its functions during that year to the Secretary of State⁴⁷ who must lay a copy of every such report received by him before Parliament⁴⁸.

The Commission must provide the Secretary of State with such information relating to the National Lottery or a lottery forming part of it as the Secretary of State may direct⁴⁹. In respect of certain of its functions⁵⁰, the Commission is under the supervision of the Administrative Justice and Tribunals Council⁵¹.

1 See the National Lottery etc Act 1993 s 3A(1) (s 3A added by the National Lottery Act 1998 s 1(3)). The National Lottery Commission was established as a body corporate on 1 April 1999 and replaced the office of Director General of the National Lottery (which was established under the National Lottery etc Act 1993 s 3 (repealed)). The functions conferred or imposed on the Director General of the National Lottery by or under the National Lottery etc Act 1993 were transferred to the Commission on that date: see the National Lottery Act 1998 s 1(4), Sch 1. Consequently any enactment or instrument passed or made before 1 April 1999 has effect, so far as necessary for the purposes of, or in consequence of, the transfers effected by s 1, Sch 1 paras 2, 3 (transfer of property, rights and liabilities, and transfer of staff), as if any reference to the Director General were a reference to the Commission: see Sch 1 para 4.

2 National Lottery etc Act 1993 Sch 2A para 1(4) (Sch 2A added by the National Lottery Act 1998 Sch 1 Pt II para 7).

3 National Lottery etc Act 1993 Sch 2A para 1(1) (as added: see note 2).

4 National Lottery etc Act 1993 Sch 2A para 1(2) (as added: see note 2).

5 National Lottery etc Act 1993 Sch 2A para 1(3) (as added: see note 2). In exercising its functions, the Commission must comply with any directions that it may be given by the Secretary of State: see s 11; and PARA 708. As to the Secretary of State see PARA 2.

6 National Lottery etc Act 1993 Sch 2A para 2(1) (substituted by the National Lottery Act 2006 s 1(1), (2)).

7 National Lottery etc Act 1993 Sch 2A para 2(2) (as added: see note 2). The Secretary of State must also satisfy himself from time to time with respect to every member that he has no such interest as is mentioned in Sch 2A para 2(2): Sch 2A para 2(3) (as so added).

8 National Lottery etc Act 1993 Sch 2A para 2(4) (as added: see note 2).

9 National Lottery etc Act 1993 Sch 2A para 3(1) (as added: see note 2).

10 National Lottery etc Act 1993 Sch 2A para 3(2) (as added: see note 2).

11 National Lottery etc Act 1993 Sch 2A para 3(3) (as added: see note 2).

12 National Lottery etc Act 1993 Sch 2A para 3(4) (as added: see note 2).

13 National Lottery etc Act 1993 Sch 2A para 3(5) (as added: see note 2).

14 National Lottery etc Act 1993 Sch 2A para 4(1) (Sch 2A para 4 substituted by the National Lottery Act 2006 s 1(1), (3)).

15 National Lottery etc Act 1993 Sch 2A para 4(2) (as substituted: see note 14).

16 National Lottery etc Act 1993 Sch 2A para 4(3) (as substituted: see note 14).

17 National Lottery etc Act 1993 Sch 2A para 4(3)(b) (as substituted: see note 14).

18 National Lottery etc Act 1993 Sch 2A para 3(2) (as added (see note 2); Sch 2A para 3(2)-(5) applied for these purposes, with modifications, by Sch 2A para 4(3)(a) (as substituted: see note 14)).

19 National Lottery etc Act 1993 Sch 2A para 3(3) (as added and applied: see notes 2, 18).

- 20 National Lottery etc Act 1993 Sch 2A para 3(4) (as added and applied: see notes 2, 18)
- 21 National Lottery etc Act 1993 Sch 2A para 3(5) (as added and applied: see notes 2, 18).
- 22 National Lottery etc Act 1993 Sch 2A para 5(1) (as added: see note 2).
- 23 National Lottery etc Act 1993 Sch 2A para 5(2) (as added: see note 2).
- 24 National Lottery etc Act 1993 Sch 2A para 5(3) (as added: see note 2).
- 25 National Lottery etc Act 1993 Sch 2A para 6(1) (as added: see note 2).
- 26 National Lottery etc Act 1993 Sch 2A para 6(2) (as added: see note 2).
- 27 Any directions under the National Lottery etc Act 1993 must be given in writing and may be varied or revoked by subsequent directions: s 61.
- 28 National Lottery etc Act 1993 Sch 2A para 6(3) (as added: see note 2).
- 29 National Lottery etc Act 1993 Sch 2A para 6(4) (as added: see note 2). Service as an employee of the Commission is included in the kinds of employment to which a scheme under the Superannuation Act 1972 s 1 (superannuation schemes as respects civil servants etc) can apply: National Lottery etc Act 1993 Sch 2A para 6(5), (6) (as so added). The Commission must pay to the Minister for the Civil Service, at such times as that minister may direct, such sums as that minister may determine in respect of the increase attributable to Sch 2A para 6(5), (6) in the sums payable out of money provided by Parliament under the Superannuation Act 1972: National Lottery etc Act 1993 Sch 2A para 6(7) (as so added).
- 30 National Lottery etc Act 1993 Sch 2A para 6A(1) (Sch 2A para 6A added by the National Lottery Act 2006, s 1(1), (4)). Where the chief executive is appointed as a member, the National Lottery etc Act 1993 Sch 2A para 5 (see the text and notes 22-24) does not apply to him: Sch 2A para 6A(2)(a) (as so added).
- 31 National Lottery etc Act 1993 Sch 2A para 6A(2)(b) (as added: see note 30).
- 32 National Lottery etc Act 1993 Sch 2A para 6A(3) (as added: see note 30). Schedule 2A para 5 (see the text and notes 22-24) does not apply to a person appointed by virtue of Sch 2A para 6A(3): Sch 2A para 6A(3) (a) (as so added).
- 33 National Lottery etc Act 1993 Sch 2A para 6A(3)(b) (as added: see note 30).
- 34 National Lottery etc Act 1993 Sch 2A para 6A(3)(c) (as added: see note 30).
- 35 National Lottery etc Act 1993 Sch 2A para 7(1) (as added: see note 2).
- 36 National Lottery etc Act 1993 Sch 2A para 7(2) (as added: see note 2).
- 37 National Lottery etc Act 1993 Sch 2A para 8(1) (as added: see note 2). In exercising its functions under Sch 2A para 8(1), the Commission must comply with any directions given to it by the Secretary of State: Sch 2A para 8(2) (as so added).
- 38 National Lottery etc Act 1993 Sch 2A para 9(1) (as added: see note 2). The functions referred to in the text are those under ss 5-10 (the licensing system) or Sch 3 (revocation of licences): see PARAS 691-704. It is the duty of the Commission to arrange for the publication, in such manner as it thinks fit, of a written statement of its reasons: (1) for any decision which it may make to grant, or not to grant, to any particular applicant a licence under s 5 (see PARAS 691, 694); (2) for any decision which it may make to revoke a licence granted under s 5; and (3) for any other decision which it may make in the exercise of its functions under ss 5-10A or Sch 3 (see PARAS 691-702) and which it considers likely to be of interest to the public: Sch 2A para 9(2) (as so added). The provisions of Sch 2A para 9(1), (2) do not apply if or to the extent that the giving, or (as the case may be) the publication, of reasons would involve disclosure of information in breach of a restriction imposed by or under any other enactment, or an obligation of confidence: Sch 2A para 9(3) (as so added).
- 39 National Lottery etc Act 1993 Sch 2A para 10 (as added: see note 2).
- 40 National Lottery etc Act 1993 Sch 2A para 11(1) (as added: see note 2). For this purpose, 'financial year' means the period beginning with 1 April 1999 (ie the date on which s 3A came into force: see the National Lottery Act 1998 (Commencement) Order 1999, SI 1999/650, art 2) and ending with the next 31 March, and each successive period of 12 months ending with 31 March: National Lottery etc Act 1993 Sch 2A para 11(6) (as so added).

- 41 National Lottery etc Act 1993 Sch 2A para 11(2) (as added: see note 2). The Secretary of State must not give a direction under Sch 2A para 11 without the Treasury's approval: Sch 2A para 11(5) (as so added). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.
- 42 National Lottery etc Act 1993 Sch 2A para 11(3) (as added: see note 2). As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.
- 43 National Lottery etc Act 1993 Sch 2A para 11(4) (as added: see note 2).
- 44 National Lottery etc Act 1993 Sch 2A para 12 (as added: see note 2).
- 45 National Lottery etc Act 1993 Sch 2A para 13 (as added: see note 2).
- 46 For this purpose, 'financial year' means the period beginning with 1 April 1999 (see note 40) and ending with the next 31 March, and each successive period of 12 months ending with 31 March: National Lottery etc Act 1993 s 14(2) (amended by the National Lottery Act 1998 Sch 1 para 13, Sch 5 Pt I).
- 47 National Lottery etc Act 1993 s 14(1) (amended by virtue of the National Lottery Act 1998 Sch 1 para 4).
- 48 National Lottery etc Act 1993 s 14(3). Certain reports must also be laid before the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.
- 49 National Lottery etc Act 1993 s 15 (amended by virtue of the National Lottery Act 1998 Sch 1 para 4).
- 50 le its functions under the National Lottery etc Act 1993 ss 10, 10A, Sch 3: see PARAS 704-702.
- 51 See the Tribunals and Inquiries Act 1992 Sch 1 Pt I para 33AA (added by the National Lottery Act 1998 Sch 1 para 12(3); amended virtue of the Tribunals, Courts and Enforcement Act 2007 ss 44, 45). As to the Administrative Justice and Tribunals Council (which replaces the Council on Tribunals) see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 56 et seq.

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8. Other bodies concerned with the National Lottery.

The Olympic Lottery Distributor¹, the Big Lottery Fund² and the distributing bodies³ are discussed in a later part of this title⁴. The National Endowment for Science, Technology and the Arts ('NESTA'), which is endowed with money from National Lottery proceeds, is also discussed in a later part of this title⁵.

1 As to the Olympic Lottery Distributor see PARA 735 et seq.

2 As to the Big Lottery fund see PARA 729 et seq.

3 As to the distributing bodies see PARA 721 et seq.

4 See notes 1-3.

5 As to NESTA see PARA 739 et seq.

UPDATE

1-18 Scope of the title ... Betting levy appeal tribunals

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D. THE HORSERACE TOTALISATOR BOARD

9. Constitution, continued existence and prospective dissolution of the Horserace Totalisator Board.

At the date at which this volume states the law, and despite the repeal of the Betting, Gaming and Lotteries Act 1963 by the Gambling Act 2005¹, the Horserace Totalisator Board ('the Totalisator Board', commonly known as 'the Tote') continues in existence as a statutory body corporate, with perpetual succession and a common seal², consisting of a chairman and such number of other members as the Secretary of State³ may determine, all of whom are appointed by the Secretary of State and hold and vacate office in accordance with the terms of the respective instruments under which they are appointed⁴. The Totalisator Board may pay to any of its members such remuneration, and travelling, subsistence or other allowances at such rates, as it may with the approval of the Secretary of State determine⁵; and it may also pay such pension or gratuity to or in respect of any of its members as it may with the approval of the Secretary of State determine⁶. It may appoint its own officers, servants and agents on such terms as to remuneration, pensions or otherwise as it may determine⁷, and may regulate its own procedure⁸. No act or proceeding of the Totalisator Board may be questioned on account of a vacancy in its membership or the defective appointment of any member⁹.

The Totalisator Board may hold a licence under the National Lottery etc Act 1993¹⁰.

References in enactments or documents to the Racecourse Betting Control Board¹¹ are to be construed as references to the Horserace Totalisator Board unless the context otherwise requires¹².

On the appointed day¹³, however, the Totalisator Board will cease to exist¹⁴ and its property, rights and liabilities will vest in the successor company¹⁵. Anything done by or in relation to the Totalisator Board which has effect immediately before the appointed day will continue to have effect as if done by or in relation to the successor company¹⁶ and anything, including any legal proceedings, which immediately before the appointed day is in the process of being done by or in relation to the Totalisator Board may be continued by or in relation to the successor company¹⁷. For the purposes of any enactment about income tax, corporation tax or capital gains tax, the successor company and the Totalisator Board are to be treated as the same person, and, in particular, the transfer¹⁸ will be disregarded¹⁹. Provision is prospectively made as to the operation of the successor company²⁰.

The Totalisator Board may do anything that it or the Secretary of State thinks necessary or expedient in connection with:

- 28 (1) a provision of Part 1 of the Horserace Betting and Olympic Lottery Act 2004²¹;
- 29 (2) the operation of the successor company on or after the appointed day; or
- 30 (3) the listing, issue, sale or other disposal of securities²² of the successor company or a company associated with it²³.

The Totalisator Board must so far as is reasonably practicable comply with any request of the Secretary of State to provide information or assistance in connection with a matter specified in

heads (1) to (3) above, and with any direction of the Secretary of State made in connection with a matter specified in those heads²⁴. Before making such a request or giving a such a direction the Secretary of State must consult the Totalisator Board²⁵.

1 As to that repeal see the Gambling Act 2005 s 356(3)(f), (4), (5), Sch 17; and as to the Secretary of State's power to make savings and modifications in respect of the Horserace Totalisator Board see s 358(4), (5). Despite that repeal, the Betting, Gaming and Lotteries Act 1963 ss 12, 14, 15 (see the text and notes 2-12; and PARAS 10-11) continue in force until immediately before the dissolution date, subject to the modification that s 14 has effect as if the expressions listed in the Gambling Act 2005 (Horserace Totalisator Board) Order 2007, SI 2007/2102, Schedule, Table, col 1 had the meanings given in the associated entry in Schedule, Table, col 2: art 2. For these purposes, 'the dissolution date' means the day appointed for the purposes of the Horserace Betting and Olympic Lottery Act 2004 s 1 as the day on which the Tote ceases to exist: Gambling Act 2005 (Horserace Totalisator Board) Order 2007, SI 2007/2102, art 1(2). At the date at which this volume states the law, no such day had been appointed. Note, however, that the Betting, Gaming and Lotteries Act 1963 ss 12, 14, 15 are prospectively repealed by the Horserace Betting and Olympic Lottery Act 2004 Sch 6, as from a day to be appointed under s 40(1); at the date at which this volume states the law, no such day had been appointed and that repeal was not in force.

2 Betting, Gaming and Lotteries Act 1963 s 12(1); and see note 1. As to bodies corporate see generally **COMPANIES** vol 14 (2009) PARA 1; **CORPORATIONS**.

3 As to the Secretary of State see PARA 2.

4 Betting, Gaming and Lotteries Act 1963 s 12(2) (amended by the Horserace Totalisator and Betting Levy Boards Act 1972 s 2).

5 Betting, Gaming and Lotteries Act 1963 s 12(3). No remuneration may be paid to a member of the Totalisator Board who is a member of, or a candidate for election to, the House of Commons: see s 12(3) proviso.

6 Betting, Gaming and Lotteries Act 1963 s 12(3A) (added by the Social Security Act 1985 s 25(1)).

7 Betting, Gaming and Lotteries Act 1963 s 12(4).

8 Betting, Gaming and Lotteries Act 1963 s 12(5). The Totalisator Board may make standing orders for the conduct of its business: s 12(5).

9 See the Betting, Gaming and Lotteries Act 1963 s 12(6).

10 See the National Lottery etc Act 1993 s 17(1); and PARA 691 note 2. As to the prospective repeal of s 17 see PARA 691 note 2.

11 This body was originally set up under the Racecourse Betting Act 1928 (repealed).

12 Betting, Gaming and Lotteries Act 1963 s 12(7).

13 'The appointed day' means a day appointed for the purposes of the Horserace Betting and Olympic Lottery Act 2004 s 1 by the Secretary of State by order made by statutory instrument: s 1(2) (not yet in force). An order under s 1 may include consequential, incidental or transitional provision: s 3(7) (not yet in force). The Secretary of State must consult the Totalisator Board and the successor company before appointing the appointed day: s 3(9) (not yet in force).

14 Horserace Betting and Olympic Lottery Act 2004 s 1(1) (not yet in force).

15 Horserace Betting and Olympic Lottery Act 2004 s 2(1) (not yet in force). 'The successor company' means a company which (1) is nominated for the purposes of s 2 by the Secretary of State in writing before the appointed day; and (2) on the appointed day is a company formed and registered under the Companies Act 2006 as a company limited by shares, and is wholly owned by the Crown: Horserace Betting and Olympic Lottery Act 2004 ss 2(2), 12(5) (not yet in force) (amended by virtue of SI 2008/248). The Secretary of State must consult the Totalisator Board before nominating the successor company: Horserace Betting and Olympic Lottery Act 2004 s 3(8) (not yet in force). A nomination under s 2(2)(a) (see head (1) above) may be revoked (and replaced) before the appointed day: s 3(10) (not yet in force). For these purposes, a company is wholly owned by the Crown if all its shares are held by the Crown (s 12(2) (not yet in force)); and shares are held by the Crown if they are held by a Minister of the Crown, by the nominee of a Minister of the Crown, or by a company of which all the shares are held by the Crown (s 12(3) (not yet in force)).

Section 2(1) will operate in relation to property, rights or liabilities: (a) whether or not they would otherwise be capable of being transferred by the Totalisator Board; (b) without any instrument or other formality being required; and (c) irrespective of any requirement for consent that would otherwise apply: s 3(5) (not yet in force). In so far as s 2 transfers to the successor company liabilities under contracts of employment, nothing in ss 2, 3 is to affect the operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246, and the Secretary of State may not appoint the appointed day unless satisfied that sufficient notice has been given to enable compliance with any applicable requirement of those regulations: Horserace Betting and Olympic Lottery Act 2004 s 3(6) (not yet in force) (amended by SI 2006/246). As to those regulations (commonly known as the 'TUPE' regulations) see **EMPLOYMENT** vol 39 (2009) PARA 110 et seq.

16 Horserace Betting and Olympic Lottery Act 2004 s 3(1) (not yet in force).

17 Horserace Betting and Olympic Lottery Act 2004 s 3(2) (not yet in force). So far as necessary or appropriate in consequence of s 2, on and after the appointed day (1) a reference to the Totalisator Board in an agreement (whether written or not), instrument or other document is to be treated as a reference to the successor company; and (2) a reference in an agreement (whether written or not), instrument or other document to a member or officer of the Totalisator Board is to be treated as a reference either (a) to a person appointed for the purpose in writing by the successor company; or (b) where no person is appointed under head (a) above, to the person who most nearly corresponds in relation to the successor company to that member or officer of the Totalisator Board: s 3(3) (not yet in force). The successor company must provide information on request about an appointment under s 2(3)(b)(i) (see head (a) above): s 3(4) (not yet in force).

18 Ie the transfer effected by the Horserace Betting and Olympic Lottery Act 2004 s 2 (not yet in force).

19 Horserace Betting and Olympic Lottery Act 2004 s 4(1) (not yet in force). The transfer effected by s 2: (1) will be disregarded for the purpose of the Finance Act 1895 s 12 (duty on property vested by Act, etc: see **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1050); and (2) will not give rise to liability under an enactment about stamp duty or stamp duty land tax in respect of anything done (by any person) before the transfer: Horserace Betting and Olympic Lottery Act 2004 s 4(2) (not yet in force). Nothing in Pt 1 (ss 1-14) constitutes arrangements for the purposes of (a) the Finance Act 1930 s 42(2) (relief from stamp duty: see **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) para 1090); (b) the Finance Act 1967 s 27(3) (stamp duty); or (c) the Finance Act 2003 Sch 7 para 2 (relief from stamp duty land tax): Horserace Betting and Olympic Lottery Act 2004 s 4(3) (not yet in force). See further **STAMP DUTIES AND STAMP DUTY RESERVE TAX**.

20 See the Horserace Betting and Olympic Lottery Act 2004 ss 5-7 (not yet in force) (ss 6, 7 respectively amended by SI 2008/948 and SI 2007/2194).

21 Ie the Horserace Betting and Olympic Lottery Act 2004 Pt 1 (ss 1-14). At the date at which this volume states the law, the majority of the provisions of Pt 1 had not been brought into force.

22 For these purposes, 'securities' means shares (including stock), debentures, bonds and other securities, whether constituting a charge on the assets of a company or not: Horserace Betting and Olympic Lottery Act 2004 s 12(4) (in force for the purposes of s 11 only).

23 Horserace Betting and Olympic Lottery Act 2004 s 11(1). Section 11, and s 12 (interpretation) for the purposes of s 11 only, came into force on 1 January 2005: see the Horserace Betting and Olympic Lottery Act 2004 (Commencement No 1) Order 2004, SI 2004/3283, art 3.

24 Horserace Betting and Olympic Lottery Act 2004 s 11(2).

25 Horserace Betting and Olympic Lottery Act 2004 s 11(3).

UPDATE

1-18 Scope of the title ... Betting levy appeal tribunals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

9 Constitution, continued existence and prospective dissolution of the Horserace Totalisator Board

NOTE 20--Horserace Betting and Olympic Lottery Act 2004 s 5 amended: SI 2009/1941.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/1. INTRODUCTION/(2) REGULATORY AUTHORITIES AND OTHER BODIES/(ii) Bodies concerned with Gambling/D. THE HORSERACE TOTALISATOR BOARD/10. Totalisator bets.

10. Totalisator bets.

At the date at which this volume states the law, the Horserace Totalisator Board (the 'Totalisator Board', commonly known as 'the Tote')¹ has power to carry on pool betting² business in any form on any horse race and on any other event approved for the purpose by the Secretary of State³, and power by way of business to receive or negotiate bets on any event made otherwise than by way of pool betting except bets on the outcome of any lottery forming part of the National Lottery⁴ for the purposes of Part I⁵ of the National Lottery etc Act 1993⁶. These provisions are, however, prospectively repealed by the Horserace Betting and Olympic Lottery Act 2004⁷.

At the date at which this volume states the law, and despite the repeal of the Betting, Gaming and Lotteries Act 1963 by the Gambling Act 2005⁸, the Totalisator Board also has the exclusive right to do, and to authorise other persons to do, either of the following things, namely:

- 31 (1) to carry on pool betting business⁹ in any form on a recognised horse race¹⁰; and
- 32 (2) by way of business to receive or negotiate bets on a recognised horse race on terms that the winnings or any part of them are to be calculated or regulated directly or indirectly by reference to the amounts or rates of any payments or distributions in respect of winning bets on the race in question made by way of sponsored pool betting¹¹.

The Totalisator Board may give any such authority as is mentioned above on such terms, including terms as to payments to the Totalisator Board, as it may think fit¹². Any infringement of the rights of the Totalisator Board is actionable at the suit of that Board¹³. Damages may be claimed as for the infringement of a proprietary right, and an injunction may be sought, with or without damages, in the High Court or in a county court¹⁴.

Where bets on a race or combination of races are made by way of sponsored pool betting, the Totalisator Board must deduct from the aggregate amount staked, or from any part of that amount, such percentage as the Totalisator Board may determine from time to time, either generally or in respect of any particular case or class of cases, and it must then cause the whole of the balance to be distributed among the persons making such of those bets as are winning bets¹⁵. Where facilities for sponsored pool betting are being provided on an approved horse racecourse by the managers of the racecourse, the amount deducted must be paid to the Totalisator Board or, to the extent allowed by the Totalisator Board, retained by the managers, and the Totalisator Board may reimburse to the racecourse managers any expenses shown to its satisfaction to have been properly incurred in connection with the provision of the facilities¹⁶. The Totalisator Board may remunerate, by commission or otherwise, any person in respect of the negotiation, receipt or transmission by that person of bets to be made by way of sponsored pool betting, or any bets which the Totalisator Board may accept or authorise the managers of the racecourse to accept¹⁷, and the Totalisator Board may provide facilities on any racecourse for persons to receive such bets¹⁸. Betting transactions which may be effected by way of sponsored pool betting are not restricted to bets on the result of one race only, or on the results of races run on one particular racecourse or on one particular day; and the Totalisator Board may give credit in any betting transaction¹⁹.

As from a day to be appointed²⁰, the following provisions will have effect. If the Secretary of State so requires, the Gambling Commission ('the Commission')²¹ must issue to the successor company²² a licence ('the exclusive licence') granting the successor company the right:

- 33 (a) to carry on pool betting business, in any form, in connection with horse races on approved horse racecourses;
- 34 (b) by way of business to receive or negotiate bets in connection with horse races on approved horse racecourses on terms that all or part of the winnings are to be calculated or regulated directly or indirectly by reference to the amounts or rates of payments or distributions in respect of winning bets made by way of pool betting; and
- 35 (c) to provide facilities in relation to a matter mentioned in head (a) or head (b) above²³.

In requiring the issue of the exclusive licence the Secretary of State may specify terms or conditions of the licence²⁴. The Secretary of State may require the issue of the exclusive licence before, on or after the appointed day²⁵, and after the successor company has ceased to be wholly owned by the Crown²⁶. He may not require the issue of the exclusive licence more than once²⁷. Unless revoked²⁸, the exclusive licence will have effect for the period of seven years beginning with the date of issue²⁹. While the exclusive licence has effect:

- 36 (i) the successor company may authorise one or more other persons to do anything that the successor company is authorised to do by the exclusive licence³⁰; and
- 37 (ii) a person other than the successor company may not do anything that the successor company is authorised to do by the exclusive licence, except in accordance with an authorisation under head (i) above³¹.

Once the Commission issues the exclusive licence to the successor company, the Commission must, if it has not already done so, issue a remote and a non-remote pool betting operating licence under the Gambling Act 2005 to the successor company which will have the effect of authorising the activities which the exclusive licence grants the successor company the right to perform³². If the successor company holds a remote or a non-remote operating licence when the exclusive licence is issued, the Commission must, if necessary, vary the licence so that it will have the effect of authorising those activities³³.

The Commission will have power to make an order revoking the exclusive licence if it thinks that a term or condition of the licence has been breached³⁴, and will be required to make an order revoking the exclusive licence if the Secretary of State so directs³⁵. The Secretary of State may so require revocation only while the successor company is wholly owned by the Crown³⁶.

The exclusive licence may not be renewed, issued or revoked otherwise than in accordance with the provisions set out above³⁷.

1 As to the constitution, continued existence and prospective dissolution of the Horserace Totalisator Board see PARA 9.

2 As to the meaning of 'pool betting' see PARA 313.

3 Horserace Totalisator and Betting Levy Boards Act 1972 s 1(1)(a) (s 1 prospectively repealed by the Horserace Betting and Olympic Lottery Act 2004 Sch 6, as from a day to be appointed under s 40(1); at the date at which this volume states the law, no such day had been appointed and that repeal was not in force). As to the Secretary of State see PARA 2. Approval must be given by order made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament; and the power to make such orders includes power to vary or revoke a previous such order: Horserace Totalisator and Betting Levy Boards Act 1972 s 1(2) (amended by the Horserace Totalisator Act 1997 s 1(3); and prospectively repealed). At the

date at which this volume states the law, no such order was in force; the Horserace Totalisator Board (Extension of Powers) Order 1996, SI 1996/2906, which was made under the Horserace Totalisator and Betting Levy Boards Act 1972 s 1(1)(b), (2) (as originally enacted), has now lapsed.

4 As to the National Lottery see PARA 686 et seq.

5 le the National Lottery etc Act 1993 Pt I (ss 1-20): see PARA 687 et seq.

6 Horserace Totalisator and Betting Levy Boards Act 1972 s 1(1)(b) (substituted by the Horserace Totalisator Act 1997 s 1(2); and prospectively repealed (see note 3)).

7 See note 3.

8 See PARA 9 note 1.

9 For these purposes, 'pool betting business' means business involving the receiving or negotiating of bets made by way of pool betting; and 'pool betting' has the same meaning as in the Gambling Act 2005 s 12 (see PARA 313): Gambling Act 2005 (Horserace Totalisator Board) Order 2007, SI 2007/2102, Schedule. As to this definition see PARA 9 note 1.

10 For these purposes, 'recognised horse race' means a horse race run on an approved horse racecourse; and 'approved horse racecourse' means any horse racecourse in respect of which a betting premises licence or an occasional use notice for the time being has effect: Gambling Act 2005 (Horserace Totalisator Board) Order 2007, SI 2007/2102, art 2, Schedule. As to this definition see PARA 9 note 1. As to the meaning of 'betting premises licence' see PARA 460 at head (5); and as to the meaning of 'occasional use notice' see PARA 616 note 20.

11 Betting, Gaming and Lotteries Act 1963 s 14(1) (amended by the Horserace Totalisator and Betting Levy Boards Act 1972 s 1(5)). For these purposes, 'sponsored pool betting' means pool betting by means of facilities provided by the Tote, or provided on an approved horse racecourse with the authority of the Tote by the persons having the management of the course: Gambling Act 2005 (Horserace Totalisator Board) Order 2007, SI 2007/2102, Schedule. As to this definition see PARA 9 note 1. Note, however, that the Betting, Gaming and Lotteries Act 1963 s 14 is prospectively repealed by the Horserace Betting and Olympic Lottery Act 2004 Sch 6, as from a day to be appointed under s 40(1); at the date at which this volume states the law, no such day had been appointed and that repeal was not in force.

Totalisator odds differ from 'fixed odds', which are predetermined by agreement between the bookmaker and his client before the race is run. In exercising its power to require payment from bookmakers in exchange for giving them authority to receive and negotiate bets at Tote odds under the Betting, Gaming and Lotteries Act 1963 s 14(1)(b) (see head (2) in the text) the Totalisator Board is entitled to fix differential payments for different classes of bookmakers provided there is a legitimate basis for such differentiation, and provided the Totalisator Board's decision is not arbitrary or capricious: *R v Horserace Totalisator Board, ex p William Hill Organisation* (11 December 1995, unreported), DC (Totalisator Board entitled to impose higher charges for authority to bet at Tote odds on bookmakers who had not installed Tote Direct terminals than those imposed on bookmakers who had installed such terminals where the latter made a greater contribution financially to the Totalisator Board than the former).

12 See the Betting, Gaming and Lotteries Act 1963 s 14(1) (prospectively repealed: see note 11).

13 Betting, Gaming and Lotteries Act 1963 s 14(2) (prospectively repealed: see note 11).

14 See the Betting, Gaming and Lotteries Act 1963 s 14(2) (prospectively repealed: see note 11). The rights of the Totalisator Board are infringed where any person without the Totalisator Board's authority carries on or authorises the carrying on of pool betting business or betting at totalisator odds on a recognised horse race, or by way of business holds himself out as willing to enter into any pool betting transaction or bet at totalisator odds on such a race: see s 14(2).

15 Betting, Gaming and Lotteries Act 1963 s 14(3) (amended by the Horserace Totalisator and Betting Levy Boards Act 1972 s 1(3)(b); and prospectively repealed (see note 11)).

16 See the Betting, Gaming and Lotteries Act 1963 s 14(4) (prospectively repealed: see note 11); and the Horserace Totalisator and Betting Levy Boards Act 1972 s 4(1) (ss 1, 4 prospectively repealed by the Horserace Betting and Olympic Lottery Act 2004 Sch 6, as from a day to be appointed under s 40(1); at the date at which this volume states the law, no such day had been appointed and that repeal was not in force).

17 le bets mentioned in the Betting, Gaming and Lotteries Act 1963 s 14(1)(b): see head (2) in the text.

18 See the Betting, Gaming and Lotteries Act 1963 s 14(5) (prospectively repealed: see note 11). This provision does not affect the Totalisator Board's power to appoint officers (see PARA 9), nor such power as it may

have to share the performance of its functions with any person under the general provisions of s 15(1)(d) (see PARA 11): see the Horserace Totalisator and Betting Levy Boards Act 1972 s 1(4) (prospectively repealed: see note 16).

19 See the Betting, Gaming and Lotteries Act 1963 s 14(6) (prospectively repealed: see note 11).

20 le as from a day to be appointed under the Horserace Betting and Olympic Lottery Act 2004 s 40(1). At the date at which this volume states the law, no such day had been appointed.

21 As to the Gambling Commission see PARA 4.

22 As to the successor company see PARA 9.

23 Horserace Betting and Olympic Lottery Act 2004 s 8(1) (not yet in force) (ss 8(1), (7), 9(1) amended by virtue of the Gambling Act 2005 Sch 5 para 4). In considering whether to require the Gambling Commission to issue or revoke the exclusive licence the Secretary of State must consider whether the issue or revocation (1) would be in the best interests of members of the public who are in the habit of placing bets on horse races; (2) would be in the best interests of the sport of horse racing; (3) would promote the objectives of (a) preventing betting from being a source of crime or disorder, being associated with crime or disorder or being used to support crime; (b) ensuring that betting is conducted in a fair and open way; and (c) protecting children and other vulnerable persons from being harmed or exploited by betting: Horserace Betting and Olympic Lottery Act 2004 s 9(1) (not yet in force) (as so amended).

24 Horserace Betting and Olympic Lottery Act 2004 s 8(3) (not yet in force). A term or condition of the exclusive licence will be of no effect to the extent that it is inconsistent with a term or condition of an operating licence under the Gambling Act 2005 issued to the successor company: Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 7(1), (2) (art 7 added by SI 2007/2169). As to the meaning of 'operating licence' see PARA 349 note 2.

25 Horserace Betting and Olympic Lottery Act 2004 s 8(4)(a) (not yet in force). As to the meaning of 'the appointed day' see PARA 9 note 13.

26 Horserace Betting and Olympic Lottery Act 2004 s 8(4)(b) (not yet in force). As to the meaning of 'wholly owned by the Crown' see PARA 9 note 15.

27 Horserace Betting and Olympic Lottery Act 2004 s 8(4)(c) (not yet in force).

28 le under the Horserace Betting and Olympic Lottery Act 2004 s 8(7): see the text and notes 34-35.

29 Horserace Betting and Olympic Lottery Act 2004 s 8(2) (not yet in force).

30 Horserace Betting and Olympic Lottery Act 2004 s 8(5)(a) (not yet in force). Such an authorisation may be given on terms and conditions which may, in particular, include provision (1) for payment to or by the successor company; (2) for agency or commission; (3) about facilities to be provided by the successor company under s 8(1)(c) (see head (c) in the text): s 8(6) (not yet in force). A term or condition of an authorisation given to a person under s 8(5)(a) will, however, be of no effect to the extent that it is inconsistent with a term or condition of any authorisation given by the successor company to that person under the Gambling Act 2005 s 94 (see PARA 373): Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 7(1), (2) (as added: see note 24).

31 Horserace Betting and Olympic Lottery Act 2004 s 8(5)(b) (not yet in force). If a person commits or threatens a breach of s 8(5)(b), the successor company may (whether or not criminal proceedings are instituted against that person), proceed against him in the High Court or a county court for damages or such other relief as the court thinks appropriate: see s 9(6) (not yet in force). Section 9(6) is to be subject to the Civil Procedure Rules, and to the Courts and Legal Services Act 1990 s 1 (allocation of business between High Court and county courts: see **COURTS** vol 10 (Reissue) PARA 579): Horserace Betting and Olympic Lottery Act 2004 s 9(7) (not yet in force).

A person who acts in contravention of s 8(5)(b) will be treated as having committed an offence under the Gambling Act 2005 s 33 (see PARA 615) irrespective of whether or not he would otherwise have committed the offence: see the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 8(1)(a), (2); and PARA 615 text and notes 27-31.

32 See the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 8(4), (5); and PARA 349 text and notes 21-23.

33 See the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 8(8)(a); and PARA 349 text and note 24.

34 Horserace Betting and Olympic Lottery Act 2004 s 8(7)(a) (not yet in force).

35 Horserace Betting and Olympic Lottery Act 2004 s 8(7)(b) (not yet in force). A direction of the Secretary of State under s 8(7)(b) must specify the reasons for the direction: s 8(8) (not yet in force). An order revoking the exclusive licence (1) must specify the reasons for the revocation (or, in the case of revocation pursuant to a direction under s 8(7)(b), the reasons for the direction specified under s 8(8)); and (2) will take effect at such time as the order may specify: s 8(9) (not yet in force). Section 8(7)(b) is to have effect as if it also provided for the Secretary of State to have power to direct the Gambling Commission to make an order revoking the exclusive licence under s 8 if any operating licence issued to the successor company ceases to have effect: Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 7(1), (4) (as added: see note 24).

36 Horserace Betting and Olympic Lottery Act 2004 s 8(10) (not yet in force).

37 Horserace Betting and Olympic Lottery Act 2004 s 8(11) (not yet in force).

UPDATE

1-18 Scope of the title ... Betting levy appeal tribunals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/1. INTRODUCTION/(2) REGULATORY AUTHORITIES AND OTHER BODIES/(ii) Bodies concerned with Gambling/D. THE HORSERACE TOTALISATOR BOARD/11. Incidental powers and duties of the Horserace Totalisator Board.

11. Incidental powers and duties of the Horserace Totalisator Board.

At the date at which this volume states the law, and despite the repeal of the Betting, Gaming and Lotteries Act 1963 by the Gambling Act 2005¹, the Horserace Totalisator Board (the 'Totalisator Board', commonly known as 'the Tote')² has power to:

- 38 (1) acquire and hold such land as may be reasonably required for the purposes of any of its functions, and to sell or lease any land it holds which is not required for those purposes³;
- 39 (2) borrow for the purposes of any of its functions and to give security for any moneys borrowed⁴;
- 40 (3) make such loans or investments as it judges desirable for the proper conduct of its affairs, being loans or investments⁵:
- 1
 - 1. (a) such as, under the enactments for the time being in force, a trustee would be authorised to make out of trust funds⁶; or
 - 2. (b) approved, or of a description approved, by the Secretary of State⁷;
- 2
 - 41 (4) do all such things as are incidental to, or conducive to the attainment of the purposes of, any of its functions⁸.

The Totalisator Board must⁹ apply any moneys from time to time available in its hands in:

- 42 (i) providing for the payment of rates, taxes¹⁰, charges, expenses and other outgoings¹¹;
- 43 (ii) making provision for the payment of any contribution to the Horserace Betting Levy Board (the 'Levy Board')¹²;
- 44 (iii) making such other provision in connection with any of its functions as the Totalisator Board may think proper¹³.

The Totalisator Board must keep proper accounts, which must be audited by qualified accountants¹⁴, and proper records in relation to those accounts; and it must prepare proper statements of account in respect of each levy period¹⁵. As soon as the accounts of the Totalisator Board for any levy period have been audited, the Totalisator Board must submit a copy of its statements of account and the auditor's report for that period, together with a report of its proceedings during that period, to the Levy Board¹⁶. The Levy Board must then submit to the Secretary of State a report of the proceedings during that period both of the Levy Board and of the Totalisator Board, which must include the statements of account and the auditor's report for that period of each of the Boards¹⁷. The report submitted by the Levy Board may be inspected free of charge during reasonable hours at its offices, and copies must be supplied on demand to any member of the public upon payment of such reasonable charge as it may determine¹⁸.

1 See PARA 9 note 1. See also note 15.

- 2 As to the constitution, continued existence and prospective dissolution of the Horserace Totalisator Board see PARA 9.
- 3 Betting, Gaming and Lotteries Act 1963 s 15(1)(a). Note, however, that the Betting, Gaming and Lotteries Act 1963 s 15 is prospectively repealed by the Horserace Betting and Olympic Lottery Act 2004 Sch 6, as from a day to be appointed under s 40(1); at the date at which this volume states the law, no such day had been appointed and that repeal was not in force.
- 4 Betting, Gaming and Lotteries Act 1963 s 15(1)(b) (prospectively repealed: see note 3).
- 5 Betting, Gaming and Lotteries Act 1963 s 15(1)(c) (prospectively repealed: see note 3).
- 6 Betting, Gaming and Lotteries Act 1963 s 15(1)(c)(i) (prospectively repealed: see note 3). As to trustees' powers of investment see **TRUSTS** vol 48 (2007 Reissue) PARA 1005 et seq.
- 7 Betting, Gaming and Lotteries Act 1963 s 15(1)(c)(ii) (prospectively repealed: see note 3). As to the Secretary of State see PARA 2.
- 8 Betting, Gaming and Lotteries Act 1963 s 15(1)(d) (prospectively repealed: see note 3).
- 9 le subject to the Betting, Gaming and Lotteries Act 1963 s 14(3)-(5): see PARA 10.
- 10 le including general betting duty: see PARA 748.
- 11 See the Betting, Gaming and Lotteries Act 1963 s 15(2)(a) (prospectively repealed: see note 3).
- 12 See the Betting, Gaming and Lotteries Act 1963 s 15(2)(b) (prospectively repealed: see note 3). As to the Horserace Betting Levy Board see PARA 12 et seq. As to the duty to contribute to the Levy Board see PARA 15; and as to the determination of such contribution see PARA 16.
- 13 See the Betting, Gaming and Lotteries Act 1963 s 15(2)(c) (prospectively repealed: see note 3).
- 14 'Qualified accountant' means a person who is eligible for appointment as a company auditor: Betting, Gaming and Lotteries Act 1963 s 55(1) (definition substituted by SI 1991/1997). This reference to a 'company auditor' is now to be read as a reference to a statutory auditor under the Companies Act 2006 Pt 42, but the Betting, Gaming and Lotteries Act 1963 s 55(1) is not specifically amended by SI 2008/948 in order to reflect this change.
- 15 Betting, Gaming and Lotteries Act 1963 s 31(1). The Betting, Gaming and Lotteries Act 1963 continues to have effect on and after 1 September 2007 in so far as is necessary to continue to give effect to s 31: Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 3(2) (amended by SI 2007/2169). 'Levy period' means a period of 12 months beginning with 1 April in any year: Betting, Gaming and Lotteries Act 1963 ss 27(1), 55(1). This definition also applies for the purposes of the Horserace Betting Levy Act 1981: see s 5(2). As to the continuation in force of the Betting, Gaming and Lotteries Act 1963 s 27 see PARA 12 note 4.
- 16 Betting, Gaming and Lotteries Act 1963 s 31(2).
- 17 Betting, Gaming and Lotteries Act 1963 s 31(2). A copy of this report must be laid before each House of Parliament: see s 31(2).
- 18 See the Betting, Gaming and Lotteries Act 1963 s 31(3).

UPDATE

1-18 Scope of the title ... Betting levy appeal tribunals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/1. INTRODUCTION/(2) REGULATORY AUTHORITIES AND OTHER BODIES/(ii) Bodies concerned with Gambling/E. THE HORSERACE BETTING LEVY BOARD, THE BOOKMAKERS' COMMITTEE AND BETTING LEVY APPEAL TRIBUNALS/12. Constitution, continued existence and prospective dissolution of the Horserace Betting Levy Board.

E. THE HORSERACE BETTING LEVY BOARD, THE BOOKMAKERS' COMMITTEE AND BETTING LEVY APPEAL TRIBUNALS

12. Constitution, continued existence and prospective dissolution of the Horserace Betting Levy Board.

The Horserace Betting Levy Board (the 'Levy Board') was established under the Betting, Gaming and Lotteries Act 1963 with the duty of assessing and collecting contributions from bookmakers¹ and the Horserace Totalisator Board (the 'Totalisator Board', commonly known as 'the Tote')² and applying them for purposes conducive to the improvement of breeds of horses, the advancement or encouragement of veterinary science or veterinary education and the improvement of horse racing³.

At the date at which this volume states the law, and despite the repeal of the Betting, Gaming and Lotteries Act 1963 by the Gambling Act 2005⁴, the Levy Board continues in existence and consists of a chairman and seven other members⁵. The chairman and two other members are appointed by the Secretary of State⁶, three are appointed by the Jockey Club (incorporating the National Hunt Committee)⁷, one is the chairman of the Bookmakers' Committee⁸ and one is the chairman of the Totalisator Board⁹. The Levy Board is a body corporate with perpetual succession and a common seal¹⁰, and may regulate its own procedure and make standing orders governing the conduct of its business¹¹.

As from a day to be appointed¹², however, the Secretary of State will have power, by order made by statutory instrument, to provide for the Levy Board to cease to exist¹³. As from such a day, if the Secretary of State directs the Totalisator Board to make and submit to him a transfer scheme providing for the transfer of specified property, rights and liabilities of the Levy Board to a person, and at a time, specified in the scheme, the Totalisator Board must comply with the direction¹⁴. The Secretary of State may approve the scheme with or without modification, and, if approved, the scheme will have effect¹⁵. If, however, the Totalisator Board fails to comply with such a direction, or the Secretary of State decides not to approve a scheme submitted to him as a result of such a direction, the Secretary of State may himself make a transfer scheme¹⁶ which will have effect¹⁷. The Secretary of State may neither make nor approve a transfer scheme under the above provisions unless he is satisfied that any property or rights transferred will be used or exercised for the purpose of the improvement of breeds of horses, the advancement or encouragement of veterinary science or veterinary education, or the improvement of horse racing¹⁸.

As from such a day, the Treasury will have power to make regulations providing:

- 45 (1) for a tax provision¹⁹ not to apply, or to apply with modifications, in respect of anything done under or in consequence of a transfer scheme;
- 46 (2) for anything done under or in consequence of a transfer scheme to have or not have a specified consequence, or to be treated in a specified way, for the purposes of a tax provision;
- 47 (3) for anything done in connection with, or done by a person with rights in connection with, anything that was at any time transferred under a transfer

- scheme, to have or not have a specified consequence, or to be treated in a specified way, for the purposes of a tax provision;
- 48 (4) for a tax provision not to apply, or to apply with modifications, in respect of anything transferred under a transfer scheme;
- 49 (5) for anything transferred under a transfer scheme to be treated in a specified way for the purposes of a tax provision;
- 50 (6) for the withdrawal of relief, whether or not granted by virtue of the regulations, and the charging of tax, in connection with anything done under or in consequence of a transfer scheme where a specified event occurs, or specified conditions are satisfied, whether on or after the commencement of the scheme;
- 51 (7) for a power under the relevant statutory provisions²⁰, or anything done in exercise of such a power, to have or not have a specified consequence, or to be treated in a specified way, for the purposes of a tax provision²¹.

The Secretary of State will have power to modify a transfer scheme²².

1 For these purposes, 'bookmaker' means any person other than the Totalisator Board who (1) whether on his own account or as servant or agent to any other person, carries on, whether occasionally or regularly, the business of receiving or negotiating bets or conducting pool betting operations; or (2) by way of business in any manner holds himself out, or permits himself to be held out, as a person who receives or negotiates bets or conducts such operations: Betting, Gaming and Lotteries Act 1963 s 55(1). However, a person must not be deemed to be a bookmaker by reason only of the fact that he carries on, or is employed in, sponsored pool betting business, or that he operates, or is employed in operating, a totalisator: s 55(1). The expression 'bookmaking' is to be construed accordingly: s 55(1). As to this definition see further note 4.

2 As to the Horserace Totalisator Board see PARAS 9-11.

3 See the Betting, Gaming and Lotteries Act 1963 ss 24(1), 55(1). The Levy Board derives many of its functions from the Totalisator Board (see the Betting Levy Act 1961 s 9 (repealed)), including the function of approving horse racecourses (see the Horserace Totalisator and Betting Levy Boards Act 1972 s 5). It may include as a 'purpose conducive to the improvement of horse racing' the provision of facilities on approved horse racecourses for sponsored pool betting: see s 4(2) (prospectively repealed by the Horserace Betting and Olympic Lottery Act 2004 Sch 6, as from a day to be appointed under s 40(1); at the date at which this volume states the law, no such day had been appointed and that repeal was not in force).

4 As to that repeal see the Gambling Act 2005 s 356(3)(f), (4), (5), Sch 17; and as to the Secretary of State's power to make savings and modifications in respect of the horserace betting levy system see s 358(4), (6). Despite that repeal, the Betting, Gaming and Lotteries Act 1963 ss 24-30 continue to have effect until immediately before the dissolution date: Gambling Act 2005 (Horserace Betting Levy) Order 2007, SI 2007/2159, art 2(1). 'The dissolution date' means the date specified in an order made under the Horserace Betting and Olympic Lottery Act 2004 s 15(1) as the date on which the Horserace Betting Levy Board ceases to exist: Gambling Act 2005 (Horserace Betting Levy) Order 2007, SI 2007/2159, art 1(2). At the date at which this volume states the law, no such order had been made. Expressions used in the Betting, Gaming and Lotteries Act 1963 ss 24-30 have the meanings given to them by s 55(1) (as that provision had effect immediately before 1 September 2007): Gambling Act 2005 (Horserace Betting Levy) Order 2007, SI 2007/2159, art 2(3).

5 Betting, Gaming and Lotteries Act 1963 s 24(2).

6 Betting, Gaming and Lotteries Act 1963 s 24(2)(a). As to the Secretary of State see PARA 2. The Secretary of State may only appoint persons who he is satisfied have no interests in horse racing which might hinder them from discharging their functions impartially: see s 24(2)(a). Such persons hold and vacate office under the terms of the instrument appointing them: see s 24(3). The Levy Board may pay to the chairman and the two other members appointed by the Secretary of State such remuneration as it may, with the approval of the Secretary of State, determine (see s 24(6)), and it may also pay them such pension or gratuity as it may, with the approval of the Secretary of State, determine (see s 24(6A) (added by the Social Security Act 1985 s 25(2))). Any functions of the government-appointed members may be exercised by any two of those members: see the Horserace Totalisator and Betting Levy Boards Act 1972 s 6 (ss 6, 8 prospectively repealed by the Horserace Betting and Olympic Lottery Act 2004 s 38, Sch 6, as from a day to be appointed under s 40(1); at the date at which this volume states the law, no such day had been appointed and that repeal was not in force). References to the 'government-appointed' members of the Levy Board are to the three persons for the time being appointed to be members of the Levy Board by the Secretary of State: Horserace Betting Levy Act 1969 s 2(3); Horserace Totalisator and Betting Levy Boards Act 1972 s 8(3) (prospectively repealed). 'Government-

appointed', with reference to members of the Levy Board, means appointed for the time being by the Secretary of State: see the Horserace Betting Levy Act 1981 ss 1(8), 3(8).

7 Betting, Gaming and Lotteries Act 1963 s 24(2)(b) (substituted by the Horserace Betting Levy Act 1969 s 6(2)). Any person appointed to be a member of the Levy Board under the Betting, Gaming and Lotteries Act 1963 s 24(2)(b) may be removed from the Levy Board at any time by the body by which he was appointed: s 24(3) (s 24(3), (4) amended by the Horserace Betting Levy Act 1969 s 6). See further note 9.

8 Betting, Gaming and Lotteries Act 1963 s 24(2)(d). As to the Bookmakers' Committee see PARA 14. See further note 9.

9 Betting, Gaming and Lotteries Act 1963 s 24(2)(e) (prospectively repealed by the Horserace Betting and Olympic Lottery Act 2004 Sch 6, as from a day to be appointed under s 40(1); at the date at which this volume states the law, no such day had been appointed and that repeal was not in force). The Jockey Club (incorporating the National Hunt Committee), the Bookmakers' Committee and the Totalisator Board respectively may from time to time appoint a person to act in the place of such a member of the Levy Board as is mentioned in the Betting, Gaming and Lotteries Act 1963 s 24(2)(b) (see the text to note 7), s 24(2)(d) (see the text to note 8) or s 24(2)(e), as the case may be, at any meeting of the Levy Board at which that member is unable to be present, and while so acting any such person is deemed for the purposes of any act or proceeding of the Levy Board to be a member of that Board: s 24(4) (as amended: see note 7). No act or proceeding of the Levy Board may be questioned on account of any vacancy in the membership or any defective appointment: see s 24(9).

10 Betting, Gaming and Lotteries Act 1963 s 24(5). As to bodies corporate see generally **COMPANIES** vol 14 (2009) PARA 1; **CORPORATIONS**.

11 Betting, Gaming and Lotteries Act 1963 s 24(8). Members of the Levy Board may be paid travelling, subsistence and other allowances at rates determined by the Levy Board with the approval of the Secretary of State: see s 24(6). The Levy Board may appoint officers, servants and agents on such terms as to remuneration, pensions or otherwise as it may determine: s 24(7).

12 As from a day to be appointed under the Horserace Betting and Olympic Lottery Act 2004 s 40(1). At the date at which this volume states the law, no such day had been appointed.

13 See the Horserace Betting and Olympic Lottery Act 2004 s 15(1)(d) (not yet in force). The Secretary of State may not, however, make an order under s 15(1)(d) providing for the Levy Board to cease to exist unless the order also makes provision, or an earlier order under s 15(1) has made provision, bringing s 17 (consequential amendments) into force at or before the time when that Board ceases to exist: s 17(1) (not yet in force).

The Secretary of State will also have power, by an order made by statutory instrument, to repeal any of the Betting, Gaming and Lotteries Act 1963 ss 24-30 (see the text and notes 1-11; and PARA 13 et seq), a provision of the Horserace Betting Levy Act 1969 and a provision of the Horserace Betting Levy Act 1981: see the Horserace Betting and Olympic Lottery Act 2004 s 15(1)(a)-(c) (not yet in force). An order under s 15(1) may (1) repeal different provisions at different times; (2) repeal a provision generally or only to a specified extent; (3) make consequential provision (which may include provision amending or repealing an enactment, in addition to the provision made by s 17, Sch 4 (consequential amendments): s 15(2) not in force). Such an order may make transitional provision or savings, which may include provision (a) modifying the effect of a provision pending its repeal; (b) about the conduct of the Horserace Betting Levy Board pending the repeal of the Betting, Gaming and Lotteries Act 1963 s 24; (c) about the conduct of the Bookmakers' Committee pending the repeal of s 26 of that Act; (d) about the conduct of an appeal tribunal pending the repeal of s 29: Horserace Betting and Olympic Lottery Act 2004 s 15(3) (not yet in force).

14 Horserace Betting and Olympic Lottery Act 2004 s 16(1), (2)(a) (not yet in force). The Secretary of State must consult the Levy Board before giving a transfer direction: Sch 3 para 16(a) (not yet in force). A direction of the Secretary of State under s 16(2): (1) must specify a date by which the transfer scheme is to be made; (2) may specify property, rights or liabilities to be transferred by the transfer scheme; (3) may specify to whom property, rights or liabilities are to be transferred by the transfer scheme: s 16(3) (not yet in force). The Levy Board must on request give the Secretary of State information or assistance in connection with such a direction: Sch 3 para 2(a) (not yet in force). The Board will also have ancillary powers in connection with such a direction: see Sch 3 para 3 (not yet in force).

15 Horserace Betting and Olympic Lottery Act 2004 s 16(2)(b), (c) (not yet in force). The Board and the Secretary of State will have ancillary powers in connection with a transfer scheme: see Sch 3 paras 3, 4 (not yet in force). As to the content and effect of a transfer scheme see Sch 3 paras 5-13 (not yet in force).

16 Horserace Betting and Olympic Lottery Act 2004 s 16(4) (not yet in force). The Levy Board must on request give the Secretary of State information or assistance in connection with a transfer scheme which he has made or may make: Sch 3 para 2(b) (not yet in force).

- 17 Horserace Betting and Olympic Lottery Act 2004 s 16(5) (not yet in force).
- 18 Horserace Betting and Olympic Lottery Act 2004 s 16(5) (not yet in force).
- 19 For these purposes, 'tax provision' means a provision of an enactment about income tax, corporation tax, capital gains tax, stamp duty, stamp duty land tax or stamp duty reserve tax: Horserace Betting and Olympic Lottery Act 2004 s 18(2) (not yet in force).
- 20 le under the Horserace Betting and Olympic Lottery Act 2004 Pt 2 (ss 15-20, Sch 3) (not fully in force).
- 21 Horserace Betting and Olympic Lottery Act 2004 s 18(1) (not yet in force).
- 22 See the Horserace Betting and Olympic Lottery Act 2004 Sch 3 paras 14, 15 (not yet in force).

UPDATE

1-18 Scope of the title ... Betting levy appeal tribunals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/1. INTRODUCTION/(2) REGULATORY AUTHORITIES AND OTHER BODIES/(ii) Bodies concerned with Gambling/E. THE HORSERACE BETTING LEVY BOARD, THE BOOKMAKERS' COMMITTEE AND BETTING LEVY APPEAL TRIBUNALS/13. General powers and duties of the Horserace Betting Levy Board.

13. General powers and duties of the Horserace Betting Levy Board.

At the date at which this volume states the law, and despite the repeal of the Betting, Gaming and Lotteries Act 1963 by the Gambling Act 2005¹, the Horserace Betting Levy Board (the 'Levy Board')² has power to:

- 52 (1) engage (with the approval of, and subject to any conditions imposed by, the Secretary of State³) in any activity connected with the improvement of breeds of horses, the advancement or encouragement of veterinary science or veterinary education and the improvement of horse racing⁴;
- 53 (2) acquire and hold such land as may be reasonably required for the purposes of any of its functions and to sell or lease any land it holds which is not required for those purposes⁵;
- 54 (3) borrow for the purposes of any of its functions and give security for any moneys borrowed⁶;
- 55 (4) lend or invest money for the purposes of or in connection with any activity in which it has power under head (1) above to engage⁷;
- 56 (5) make such other investments as it judges desirable for the proper conduct of its affairs, and a trustee would be able to make under the general power of investment under the Trustee Act 2000⁸;
- 57 (6) do all such things as are incidental to, or conducive to the attainment of the purposes of, any of its functions⁹.

The Levy Board must apply any moneys from time to time available in its hands:

- 58 (a) in providing for the payment of rates, taxes, charges, expenses and other outgoings, including any sums which it is required or authorised to pay by virtue of any enactment¹⁰;
- 59 (b) in retaining such sums and making provision for such matters as it thinks proper in connection with any of its functions¹¹;
- 60 (c) in making such payments as it thinks fit for charitable purposes¹²;
- 61 (d) subject to heads (a) to (c) above, in making payments, in accordance with schemes prepared by the Levy Board and approved with or without modifications by the Secretary of State, for the purposes of the improvement of breeds of horses, the advancement or encouragement of veterinary science or veterinary education and the improvement of horse racing¹³.

1 See PARA 12 note 4.

2 As to the constitution, continued existence and prospective dissolution of the Horserace Betting Levy Board see PARA 12.

3 As to the Secretary of State see PARA 2.

4 See the Betting, Gaming and Lotteries Act 1963 s 25(1)(a).

5 Betting, Gaming and Lotteries Act 1963 s 25(1)(b).

- 6 Betting, Gaming and Lotteries Act 1963 s 25(1)(c).
- 7 Betting, Gaming and Lotteries Act 1963 s 25(1)(d).
- 8 Betting, Gaming and Lotteries Act 1963 s 25(1)(e) (substituted by the Trustee Act 2000 Sch 2 para 34). As to the general power of investment see the Trustee Act 2000 s 3 (as restricted by ss 4, 5); and **TRUSTS** vol 48 (2007 Reissue) PARAS 1012-1014.
- 9 Betting, Gaming and Lotteries Act 1963 s 25(1)(f).
- 10 Betting, Gaming and Lotteries Act 1963 s 25(2)(a) (amended by the Horserace Betting Levy Act 1969 s 7(3)).
- 11 Betting, Gaming and Lotteries Act 1963 s 25(2)(b).
- 12 Betting, Gaming and Lotteries Act 1963 s 25(2)(c).
- 13 Betting, Gaming and Lotteries Act 1963 s 25(2)(d).

UPDATE

1-18 Scope of the title ... Betting levy appeal tribunals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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14. The Bookmakers' Committee.

At the date at which this volume states the law, and despite the repeal of the Betting, Gaming and Lotteries Act 1963 by the Gambling Act 2005¹, there is constituted a Bookmakers' Committee in order to assist the Horserace Betting Levy Board (the 'Levy Board')² to perform its functions³. The Bookmakers' Committee consists of 13 members of whom:

- 62 (1) two are to be appointed by Coral Racing Ltd;
- 63 (2) two are to be appointed by Ladbroke Racing Ltd;
- 64 (3) two are to be appointed by William Hill Organisation Ltd;
- 65 (4) two are to be appointed by the National Association of Bookmakers Ltd from amongst persons nominated for the purpose by associations for the time being affiliated to the National Association of Bookmakers Ltd;
- 66 (5) four are to be appointed by the Association of British Bookmakers Ltd to represent the interests of the members of that body other than those listed in heads (1) to (3) above; and
- 67 (6) one is to be appointed by the Sporting Exchange Ltd⁴.

Its functions are to make recommendations to the Levy Board as to the bookmakers'⁵ levy scheme for the forthcoming levy period⁶, and, if so requested, to give advice to the government-appointed members⁷ of the Levy Board as to:

- 68 (a) the category into which any individual bookmaker falls for the purposes of the levy⁸;
- 69 (b) the amounts and times of payment of levy on account⁹; and
- 70 (c) applications for relief from levy¹⁰.

Provision may be made, and from time to time varied, by a scheme for the payment of remuneration to all or any of the members of the Bookmakers' Committee, and for the provision of secretarial and other facilities for the Bookmakers' Committee¹¹. The Levy Board must pay:

- 71 (i) any amounts payable by virtue of any scheme¹²;
- 72 (ii) any other expenses incurred by the Bookmakers' Committee for the purposes of the Betting, Gaming and Lotteries Act 1963 with the approval, whether general or special, of the Levy Board¹³;
- 73 (iii) any travelling and other expenses reasonably incurred by any person as a member of the Bookmakers' Committee¹⁴.

The Bookmakers' Committee may regulate its own procedure and make standing orders governing the conduct of its business¹⁵.

1 See PARA 12 note 4.

2 As to the constitution, continued existence and prospective dissolution of the Horserace Betting Levy Board see PARA 12.

3 See the Betting, Gaming and Lotteries Act 1963 ss 26(1), 55(1). As to the functions of the Levy Board see PARA 12. The Bookmakers' Committee is constituted in the manner prescribed by regulations made by the Secretary of State after consultations with interested bodies: see s 26(1); the Horserace Betting Levy (Bookmakers' Committee) Regulations 2003, SI 2003/1909; and the text and note 4. As to the Secretary of State see PARA 2.

4 Horserace Betting Levy (Bookmakers' Committee) Regulations 2003, SI 2003/1909, reg 2. The appointment of the Committee is to be for a term of three years, but a person ceasing to be a member on the expiry of his term of office is not on that account ineligible for re-appointment: reg 3. A person may be removed at any time from membership of the Committee by the body by which he was appointed: reg 4. Where any vacancy occurs in the membership of the Committee, the body by which the person whose office has been vacated was appointed must, as soon as practicable, make a fresh appointment to the Committee (ie an appointment for a term of three years): reg 5. The members of the Committee must appoint one of their number to be the chairman of the Committee and, subject to his remaining a member of the Committee, he holds office as chairman for such period as they may determine and is eligible for re-appointment as such: reg 6. Seven members present (or such larger number of members as the Committee may from time to time determine) are a quorum at any meeting of the Committee: reg 7.

5 As to the meaning of 'bookmaker' see PARA 12 note 1.

6 See the Betting, Gaming and Lotteries Act 1963 s 27(3). As to bookmakers' levy schemes see PARA 15. As to the meaning of 'levy period' see PARA 11 note 15.

7 As to the government-appointed members see PARA 12 text and note 6.

8 See the Horserace Betting Levy Act 1969 s 2(4) (amended by the Horserace Betting Levy Act 1981 Schedule para 4). As to the assessment to levy see PARA 16.

9 See the Horserace Betting Levy Act 1981 s 1(5). As to payments on account of levy see PARA 17.

10 See the Horserace Betting Levy Act 1981 s 3(2).

11 Betting, Gaming and Lotteries Act 1963 s 26(2). Such a scheme may be made at any time by agreement between the Bookmakers' Committee and the Levy Board, or, on any occasion on which proposals for such a scheme are made by the Bookmakers' Committee or by the Levy Board but the Bookmakers' Committee and the Levy Board cannot agree thereon, may be made by the three persons for the time being appointed to be members of the Levy Board by the Secretary of State: s 26(2).

12 Betting, Gaming and Lotteries Act 1963 s 26(3)(a).

13 Betting, Gaming and Lotteries Act 1963 s 26(3)(b).

14 Betting, Gaming and Lotteries Act 1963 s 26(3)(c).

15 Betting, Gaming and Lotteries Act 1963 s 26(4). No act or proceeding of the Bookmakers' Committee is to be questioned on account of any vacancy in its membership or any defective appointment: see s 26(5).

UPDATE

1-18 Scope of the title ... Betting levy appeal tribunals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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15. Bookmakers' levy schemes.

At the date at which this volume states the law, and despite the repeal of the Betting, Gaming and Lotteries Act 1963 by the Gambling Act 2005¹, the Horserace Betting Levy Board (the 'Levy Board')² is empowered to make a scheme for the collection of horserace betting levy from bookmakers³ for each levy period⁴. Horserace betting levy is a monetary contribution payable by bookmakers and the Horserace Totalisator Board (the 'Totalisator Board')⁵ on that part of their turnover which derives from betting on horse races⁶.

A scheme must include provision:

- 74 (1) for securing that the levy should be payable only by a bookmaker who carries on on his own account a business which includes betting on horse races and only on that part of the business which relates to horserace betting⁷;
- 75 (2) for bookmakers to be divided for the purposes of the levy into different categories⁸;
- 76 (3) for the amount, if any, payable by way of the levy by any particular bookmaker to be determined by reference to the category into which he falls⁹;
- 77 (4) as to the method of the promulgation of the scheme by the Levy Board¹⁰;
- 78 (5) for the submission to the Levy Board by each bookmaker before a specified date of a declaration as to the category into which he falls¹¹;
- 79 (6) for the issue by the Levy Board of notices of assessment to, and certificates of exemption from, the levy¹².

Schemes have taken the form of a levy on bookmakers' gross turnover on horserace betting¹³. The different categories into which bookmakers are divided may vary from scheme to scheme.

Before the beginning of any levy period the Bookmakers' Committee¹⁴ must make recommendations to the Levy Board with respect to the scheme to have effect for that period, in the form either of a draft scheme or of a recommendation that the current scheme continue to have effect with or without amendment¹⁵. If the Levy Board approves the recommendations, either in their original form or as revised by the Bookmakers' Committee in the light of observations to the Bookmakers' Committee by the Levy Board, the scheme as recommended and approved has effect for the levy period in question¹⁶. If five months¹⁷ before the beginning of a levy period the Levy Board has not approved recommendations or revised recommendations of the Bookmakers' Committee (or if no such recommendations have been received by the Levy Board), then the Levy Board must report the circumstances to the Secretary of State, and the Secretary of State determines the scheme to have effect¹⁸. He may either determine a new scheme for the period or direct that the current scheme is to continue to have effect with or without modifications¹⁹.

1 See PARA 12 note 4.

2 As to the constitution, continued existence and prospective dissolution of the Horserace Betting Levy Board see PARA 12.

3 As to the meaning of 'bookmaker' see PARA 12 note 1.

- 4 See the Betting, Gaming and Lotteries Act 1963 s 27(1). As to the meaning of 'levy period' see PARA 11 note 15.
- 5 As to the Horserace Totalisator Board see PARAS 9-11.
- 6 See the Betting, Gaming and Lotteries Act 1963 ss 24(1), 27(2)(a), 30(1).
- 7 See the Betting, Gaming and Lotteries Act 1963 s 27(2)(a).
- 8 Betting, Gaming and Lotteries Act 1963 s 27(2)(b).
- 9 Betting, Gaming and Lotteries Act 1963 s 27(2)(c).
- 10 Betting, Gaming and Lotteries Act 1963 s 27(2)(d).
- 11 Betting, Gaming and Lotteries Act 1963 s 27(2)(e).
- 12 Betting, Gaming and Lotteries Act 1963 s 27(2)(f). As to the assessment to levy see PARA 16.
- 13 Prior to the amendments to the basis of assessing general betting duty introduced by the Finance Act 2001 (see PARA 745) levy was charged on all sums actually paid by the person betting. As to the amount of general betting duty now charged see PARAS 748-749.
- 14 As to the Bookmakers' Committee see PARA 14.
- 15 See the Betting, Gaming and Lotteries Act 1963 s 27(3).
- 16 See the Betting, Gaming and Lotteries Act 1963 s 27(4). Fairness requires consultation with those liable to be adversely affected by the imposition of the levy, including consultation with bookmakers not represented on the Bookmakers' Committee: see *R (on the application of Sporting Options) v Horseracing Betting Levy Board* [sic] [2003] EWHC 1943 (Admin), [2003] All ER (D) 560 (Jul).
- 17 The period of months specified in the Horserace Betting Levy Act 1969 s 1(2) may be varied by order of the Secretary of State substituting, in relation to any levy period beginning after the date on which the order comes into force, a different period, whether longer or shorter, but not longer than 15 months: s 1(7). Where the effect of an order is to increase the period of months, the order must not be made so as to come into force later than three months before the beginning of the increased period: s 1(7) proviso. As to the regulations which have been made under s 1(7) see the Horserace Betting Levy Schemes (Variation of Settlement Period) Order 1981, SI 1981/753, which amends the Horserace Betting Levy Act 1969 s 1(2) (see note 18). As to the Secretary of State see PARA 2.
- 18 Horserace Betting Levy Act 1969 s 1(1), (2) (amended by SI 1981/753). Before determining a scheme the Secretary of State may appoint one or more persons to inquire into, and report to him their opinion on, any matter appearing to him to be relevant to the form or content of the scheme: Horserace Betting Levy Act 1969 s 1(5). The Secretary of State may require the Levy Board to pay to such a person such remuneration as the Secretary of State may specify and any travelling and other expenses reasonably incurred by that person in doing that which he was appointed by the Secretary of State to do: s 1(6).
- 19 See the Horserace Betting Levy Act 1969 s 1(3).

UPDATE

1-18 Scope of the title ... Betting levy appeal tribunals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/1. INTRODUCTION/(2) REGULATORY AUTHORITIES AND OTHER BODIES/(ii) Bodies concerned with Gambling/E. THE HORSERACE BETTING LEVY BOARD, THE BOOKMAKERS' COMMITTEE AND BETTING LEVY APPEAL TRIBUNALS/16. Assessment to levy.

16. Assessment to levy.

At the date at which this volume states the law, and despite the repeal of the Betting, Gaming and Lotteries Act 1963 by the Gambling Act 2005, the following provisions have effect¹. Before a date specified in each scheme each bookmaker² is required to complete and return to the Horserace Betting Levy Board (the 'Levy Board')³ a declaration as to the category into which he falls⁴. Whether or not he submits a declaration, a bookmaker is assessed to, or exempted from, levy in accordance with such opinion as the government-appointed members⁵ of the Levy Board may form as to the category into which he falls⁶. An assessment notice issued by the Levy Board in the case of any bookmaker for the levy period⁷ is conclusive as to the liability of that bookmaker unless an appeal is made by notice in writing to the Levy Board not later than 28 days after service of the notice of assessment⁸. The Levy Board must refer the appeal to a betting levy appeal tribunal⁹. Within 21 days of being notified¹⁰ that the appeal has been referred to the tribunal, the appellant must furnish the Levy Board and the tribunal with a statement in writing setting out the ground of his appeal¹¹. The tribunal has power after the hearing of the appeal¹² to confirm, increase or reduce the assessment, or to grant the appellant a certificate of exemption from the levy according to the tribunal's opinion as to the category into which he falls¹³. It may not, however, reduce the assessment or exempt the bookmaker unless he has afforded it all the facilities it has required to investigate the case¹⁴ and unless it is satisfied that the assessment should be varied or rescinded¹⁵. The tribunal's decision is final¹⁶. The tribunal has power to award costs to a successful appellant¹⁷, and to make against an unsuccessful appellant an award to cover expenses incurred by the tribunal¹⁸ and an award of costs in favour of the Levy Board¹⁹.

Any amount assessed as payable by any bookmaker by way of the levy in respect of any levy period (except to the extent of any payments on account) becomes due 28 days after notice of the assessment has been served on the bookmaker or, if he appeals, on the determination or abandonment of the appeal, and is recoverable by the Levy Board as a debt due to it²⁰. Upon the discharge by a bookmaker of his liability by way of the levy in respect of any levy period in accordance with the notice of assessment issued in his case, the Levy Board must issue to him a certificate in writing to the effect that he has done so, and any such certificate is conclusive evidence of the facts stated in it²¹.

The contribution to be paid by the Horserace Totalisator Board (the 'Totalisator Board')²² in respect of any levy period is to be determined before the beginning of the period by the Levy Board after consultation with the Totalisator Board²³.

1 See PARA 12 note 4.

2 As to the meaning of 'bookmaker' see PARA 12 note 1.

3 As to the constitution, continued existence and prospective dissolution of the Horserace Betting Levy Board see PARA 12.

4 See the Betting, Gaming and Lotteries Act 1963 s 27(2)(e); and PARA 15. A requirement that he should do so must be included in any scheme: see s 27(2)(e). As to the bookmakers' levy schemes see PARA 15.

5 As to the government-appointed members see PARA 12 text and note 6.

6 See the Horserace Betting Levy Act 1969 s 2(2) (amended by the Horserace Betting Levy Act 1981 Schedule para 4).

7 As to the meaning of 'levy period' see PARA 11 note 15.

8 See the Betting, Gaming and Lotteries Act 1963 s 28(5). An assessment notice may be served on any bookmaker either by serving it on him personally or by sending it to him by post at his usual or last-known residence or place of business in the United Kingdom or, if the bookmaker is a company, at the company's registered office: s 28(9).

'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 3.

9 See the Betting, Gaming and Lotteries Act 1963 s 28(6); and the Betting Levy Appeal Tribunal (England and Wales) Rules 1963, SI 1963/748, r 3 (substituted by SI 1982/270). The form of reference is prescribed by the Betting Levy Appeal Tribunal (England and Wales) Rules 1963, SI 1963/748, Schedule, Form 1. As to betting levy appeal tribunals see PARA 18.

10 On referring an appeal to a tribunal the Levy Board must furnish the appellant with copies of the notice of reference and inform him of the address of the tribunal: Betting Levy Appeal Tribunal (England and Wales) Rules 1963, SI 1963/748, r 4(b) (amended by SI 1982/270).

11 Betting Levy Appeal Tribunal (England and Wales) Rules 1963, SI 1963/748, r 5(1).

12 The date, time and place of the hearing are fixed, but may be postponed or adjourned, by the tribunal, which must give the appellant and the Levy Board not less than 28 days' notice: see the Betting Levy Appeal Tribunal (England and Wales) Rules 1963, SI 1963/748, rr 6(1), 16. The appellant may, at least 14 days before the hearing, submit to the tribunal for consideration at the hearing written representations relating to his appeal, and supply copies of his representations to the Levy Board: see r 6(2). The hearing is in private, unless the appellant otherwise requests in writing (see r 7(1)), but a member of the Administrative Justice and Tribunals Council may attend in any case (see r 7(2) (amended by virtue of the Tribunals, Courts and Enforcement Act 2007 ss 44, 45)). Both the appellant and the Levy Board may be represented by counsel, a solicitor or any other person: see the Betting Levy Appeal Tribunal (England and Wales) Rules 1963, SI 1963/748, r 11. The appellant may at any time abandon his appeal by notice in writing to the tribunal, whereupon the Levy Board may apply for its expenses (see the text and note 19): see r 12 (amended by SI 1982/270).

13 See the Betting, Gaming and Lotteries Act 1963 s 28(6). The tribunal may reach its decision by a majority: see the Betting Levy Appeal Tribunal (England and Wales) Rules 1963, SI 1963/748, r 10(1). The decision of the tribunal may be taken by a majority and must be recorded in writing substantially in accordance with the prescribed form and signed by the chairman and must be communicated in writing to the appellant and the Levy Board within seven days: see r 10(1), Schedule, Forms 3, 6 (amended by SI 1982/270). The reasons for the tribunal's decision must also be recorded in writing and signed by the chairman and must, if the appellant or the Levy Board so requests within 21 days of receiving notice in writing of the decision, be supplied to the appellant and the Levy Board: Betting Levy Appeal Tribunal (England and Wales) Rules 1963, SI 1963/748, r 10(2).

14 See the Betting, Gaming and Lotteries Act 1963 s 28(6)(a). If the tribunal requires any facilities for the investigation of the appellant's case it must give notice in writing to the appellant substantially in the prescribed form specifying the facilities: see the Betting Levy Appeal Tribunal (England and Wales) Rules 1963, SI 1963/748 r 5(2), Schedule, Form 5 (amended by SI 1982/270).

15 See the Betting, Gaming and Lotteries Act 1963 s 28(6)(b).

16 See the Betting, Gaming and Lotteries Act 1963 s 28(6). This does not exclude judicial review since the impress of finality is given to decisions of an inferior court on condition that the decision is reached in accordance with law, and if a tribunal goes wrong in law and the error appears on the face of the record the High Court may interfere by a quashing order or a declaration: *Tehrani v Rostron* [1972] 1 QB 182, [1971] 3 All ER 790, CA. As to quashing orders see **JUDICIAL REVIEW** vol 61 (2010) PARA 693 et seq; as to declarations see **JUDICIAL REVIEW** vol 61 (2010) PARA 716 et seq; and as to judicial remedies generally see **JUDICIAL REVIEW** vol 61 (2010) PARA 687 et seq.

17 See the Betting, Gaming and Lotteries Act 1963 s 29(6). No such award may be made without giving the Levy Board and the appellant an opportunity to be heard or to make written representations: see the Betting Levy Appeal Tribunal (England and Wales) Rules 1963, SI 1963/748, r 13 (substituted by SI 1982/270).

18 See the Betting, Gaming and Lotteries Act 1963 s 29(7). See also note 17.

19 See the Horserace Betting Levy Act 1969 s 3 (amended by the Horserace Betting Levy Act 1981 Schedule para 5). See also note 17.

20 Betting, Gaming and Lotteries Act 1963 s 28(7) (s 28(7), (8) amended by the Horserace Betting Levy Act 1981 Schedule para 1).

21 Betting, Gaming and Lotteries Act 1963 s 28(8) (as amended: see note 20). As to the disclosure of declarations, assessments and information without the consent of the bookmaker concerned see s 28(10) (amended by the Horserace Betting Levy Act 1969 s 2(5); the Horserace Betting Levy Act 1981 Schedule para 1; and by virtue of the Criminal Justice Act 1982 ss 37, 39(3), 46, Sch 3). The Betting, Gaming and Lotteries Act 1963 s 28(10) does not apply to any information provided by a member, officer or servant of the Horserace Betting Levy Board to the Gambling Commission for use by the Commission in the exercise of its functions (including any information provided for the purposes of the Gambling Act 2005 ss 116-120 as modified by the Gambling Act 2005 (Horserace Betting Levy) Order 2007, SI 2007/2159, art 3: see PARAS 395-397): art 2(2). As to the Gambling Commission see PARA 4.

22 le under the Betting, Gaming and Lotteries Act 1963 s 24(1): see PARA 12. As to the Horserace Totalisator Board see PARAS 9-11.

23 Betting, Gaming and Lotteries Act 1963 s 30(1). If the Totalisator Board objects to the amount of levy imposed upon it by the Levy Board, the contribution is instead to be determined by the Secretary of State (see the Horserace Betting Levy Act 1969 s 5(1) (as originally enacted)), who may appoint one or more persons to inquire into, and report to him their opinion on, any matter appearing to him to be relevant to the subject matter of his determination (see s 5(3)). The Secretary of State may require the Levy Board to pay to such a person such remuneration as the Secretary of State may specify and any travelling and other expenses reasonably incurred by that person in doing that which he was appointed by the Secretary of State to do: s 5(4). As to the Secretary of State see PARA 2.

As from a day to be appointed under the Horserace Betting and Olympic Lottery Act 2004 s 40(1), if the successor company to the Totalisator Board objects to the contribution determined by the Levy Board under the Betting, Gaming and Lotteries Act 1963 s 30(1), the contribution payable by the successor company in respect of that period is instead to be determined by the Secretary of State; but this will not apply to any contribution which the successor company to the Totalisator Board is liable to make (1) in respect of a time when the exclusive licence does not have effect; and (2) as a bookmaker: see the Horserace Betting Levy Act 1969 s 5(1), (1A) (s 5(1) prospectively amended, and s 5(1A) prospectively added, by the Horserace Betting and Olympic Lottery Act 2004 Sch 2 para 19, as from such a day; at the date at which this volume states the law, no such day had been appointed). As to the successor company see PARA 9.

UPDATE

1-18 Scope of the title ... Betting levy appeal tribunals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/1. INTRODUCTION/(2) REGULATORY AUTHORITIES AND OTHER BODIES/(ii) Bodies concerned with Gambling/E. THE HORSERACE BETTING LEVY BOARD, THE BOOKMAKERS' COMMITTEE AND BETTING LEVY APPEAL TRIBUNALS/17. Payments on account of levy.

17. Payments on account of levy.

A bookmakers' levy scheme¹ under which the levy payable by one or more categories of bookmakers is determined by reference to the amounts staked with them during the levy period² may incorporate a provision requiring bookmakers within the scheme³ to make payment of sums on account of levy before the assessment of levy is made⁴. Bookmakers may be divided into different categories for the purpose of determining the amounts so payable and the times when payments are to be made⁵.

The government-appointed members⁶ of the Horserace Betting Levy Board (the 'Levy Board')⁷ determine the amounts to be paid on account⁸ and times⁹ of payment, and the Levy Board must notify the bookmaker by a notice¹⁰ of determination¹¹. A notice of determination is conclusive as to a bookmaker's liability to make the payments specified in the notice unless it is withdrawn¹² or an appeal on the grounds that the determination was not in accordance with the scheme is, by notice in writing to the Levy Board, made not later than 28 days after service of the notice¹³. Any appeal must be referred to a betting levy appeal tribunal¹⁴, which has power to confirm¹⁵ or rescind¹⁶ the determination or to increase or decrease the amount payable¹⁷. The decision of the tribunal as to the amount to be paid on account under the scheme is final¹⁸.

It is an offence for any member, officer or servant of the Levy Board, the Bookmakers' Committee¹⁹ or an appeal tribunal, or any person consulted²⁰ by the Levy Board, to disclose information concerning a bookmaker obtained through the exercise of that person's functions, in such a manner as to identify the bookmaker, except:

- 80 (1) with the written consent of the bookmaker²¹;
- 81 (2) for the purposes of the Horserace Betting Levy Act 1981²²;
- 82 (3) for the purposes of a report of proceedings before an appeal tribunal²³;
- 83 (4) for the purposes of criminal proceedings, proceedings for the recovery of payment on account, or proceedings relating to that bookmaker before an appropriate authority or a court on appeal from that authority²⁴.

If a bookmaker accepts that the notice of determination served on him is in accordance with the scheme but alleges that his circumstances make it unjust that he should make payment on account, he may apply in writing at any time to the Levy Board to be excused from making payment²⁵. Such an application is determined by the government-appointed members of the Levy Board²⁶, who may, if of the opinion that a reduction ought to be made in the payments on account to be made by a bookmaker, give a direction either that those payments are to cease to be payable, or that they are to be reduced to such amount or amounts as may be specified²⁷. A notice cancelling the determination or a revised notice of determination is issued as appropriate by the government-appointed members²⁸. A bookmaker who makes such an application for relief from payment forfeits his right to appeal to a tribunal against the notice of determination or any revised notice issued in place of it²⁹, although his right to appeal against the notice of assessment for that levy period is unaffected. A second or subsequent application for relief in the same levy period may only be made if there has been a change in the bookmaker's circumstances since the last application³⁰.

1 'Bookmakers' levy scheme' means a scheme for the payment of a levy by bookmakers under the Betting, Gaming and Lotteries Act 1963 s 27 (see PARA 15); Horserace Betting Levy Act 1981 s 1(8). As to the meaning of 'bookmaker' see PARA 12 note 1.

2 As to the meaning of 'levy period' see PARA 11 note 15.

3 A bookmaker is 'within the scheme' for any levy period if in that period he carries on on his own account a business which includes the effecting of betting transactions on horse races: Horserace Betting Levy Act 1981 s 1(8).

4 See the Horserace Betting Levy Act 1981 s 1(1), (2). The Horserace Betting Levy Act 1981 does not extend to Northern Ireland: s 5(3).

5 See the Horserace Betting Levy Act 1981 s 1(3).

6 As to the government-appointed members see PARA 12 text and note 6.

7 See the Horserace Betting Levy Act 1981 s 1(5); and PARA 14. As to the constitution, continued existence and prospective dissolution of the Horserace Betting Levy Board see PARA 12.

8 Where the amount paid on account exceeds the amount to which the bookmaker is subsequently assessed, the Levy Board must repay the excess when it issues the notice of assessment; if a further excess arises as a result of an appeal against assessment, that further excess must be repaid within 14 days of the determination of the appeal: see the Horserace Betting Levy Act 1981 s 4(2). As to the assessment to levy generally see PARA 16.

9 Payments on account become due on the date or dates specified in the notice of determination, and are recoverable as a debt due to the Levy Board; however, if the date or first date falls within the period allowed for appeals, the payment or first payment becomes due at the end of that period, or, if an appeal is made, on the determination or abandonment of the appeal: see the Horserace Betting Levy Act 1981 s 4(1). As to appeals against a notice of determination see the text and notes 12-17.

10 Any notice issued under the Horserace Betting Levy Act 1981 in the case of any bookmaker may be served on him either by serving it on him personally or by sending it to him by post at his usual or last-known residence or place of business in the United Kingdom or, if the bookmaker is a company, at the company's registered office: s 4(5). As to the meaning of 'United Kingdom' see PARA 16 note 8.

11 See the Horserace Betting Levy Act 1981 s 1(6). These categories may, but need not, be the same as the categories into which they are divided for payment of levy: s 1(4). The government-appointed members of the Levy Board may consult the Bookmakers' Committee (see PARA 14) or any other person in making such determinations: see s 1(5).

12 If the Levy Board is of opinion that payments on account should not be required from any bookmaker within the scheme it must refrain from issuing a notice of determination or withdraw a notice which it has issued: Horserace Betting Levy Act 1981 s 1(7).

13 See the Horserace Betting Levy Act 1981 s 2(1).

14 See the Horserace Betting Levy Act 1981 s 2(2). As to the betting levy appeal tribunals see the Betting, Gaming and Lotteries Act 1963 s 29; and PARA 18.

15 The tribunal must confirm the determination unless it is satisfied, on all the evidence made available, that the amount should be varied or the determination rescinded: Horserace Betting Levy Act 1981 s 2(3)(b).

16 The tribunal must not rescind the determination or reduce the amount unless the appellant has afforded it all the facilities it may have required to investigate his case: Horserace Betting Levy Act 1981 s 2(3)(a).

17 See the Horserace Betting Levy Act 1981 s 2(3). The powers of the tribunal and the procedure are similar to those for appeal against an assessment notice: see PARA 16. A notice of reference of appeal is prescribed by the Betting Levy Appeal Tribunal (England and Wales) Rules 1963, SI 1963/748, r 3, Schedule, Form 4 (r 3 substituted, and Schedule Form 4 added, by SI 1982/270). A notice requiring facilities for investigation is prescribed by the Betting Levy Appeal Tribunal (England and Wales) Rules 1963, SI 1963/748, r 5, Schedule Form 5 (r 5 amended, and Schedule Form 5 added, by SI 1982/270). A notice of determination is prescribed by the Betting Levy Appeal Tribunal (England and Wales) Rules 1963, SI 1963/748, r 10, Schedule Form 6 (r 10 amended, and Schedule Form 6 added, by SI 1982/270). See further PARA 16.

18 Horserace Betting Levy Act 1981 s 2(4).

19 As to the Bookmakers' Committee see PARA 14.

20 Is consulted by virtue of the Horserace Betting Levy Act 1981 s 1(5) (see the text to notes 6-7) or s 3(2) (see the text to note 26).

21 See the Horserace Betting Levy Act 1981 s 4(3), (4). The offence is punishable on summary conviction by a fine not exceeding level 4 on the standard scale: s 4(3) (amended by virtue of the Criminal Justice Act 1982 s 46).

The 'standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37: see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164; and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 144.

22 See the Horserace Betting Levy Act 1981 s 4(3)(a).

23 See note 22.

24 See the Horserace Betting Levy Act 1981 s 4(3)(b). The reference in the text to an 'appropriate authority' is to an appropriate authority within the meaning of the Betting, Gaming and Lotteries Act 1963 Sch 1 (repealed). As to proceedings in connection with the grant or renewal of betting operating licences and betting premises licences see now the Gambling Act 2005 Pts 5, 8; and PARAS 349 et seq, 460 et seq.

25 See the Horserace Betting Levy Act 1981 s 3(1).

26 See the Horserace Betting Levy Act 1981 s 3(2).

27 See the Horserace Betting Levy Act 1981 s 3(3). The government-appointed members of the Levy Board may consult the Bookmakers' Committee and any other person as those members of the Levy Board think proper: see s 3(2).

28 See the Horserace Betting Levy Act 1981 s 3(4). A revised notice of determination has effect (subject to s 3(7): see the text to note 29) as if it were an original notice of determination: see s 3(5).

29 See the Horserace Betting Levy Act 1981 s 3(7). If a bookmaker gives notice of appeal under s 2 (see the text and notes 13-18) he must not make an application under s 3 until after the appeal has been determined or abandoned: see s 3(7).

30 See the Horserace Betting Levy Act 1981 s 3(6).

UPDATE

1-18 Scope of the title ... Betting levy appeal tribunals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/1. INTRODUCTION/(2) REGULATORY AUTHORITIES AND OTHER BODIES/(ii) Bodies concerned with Gambling/E. THE HORSERACE BETTING LEVY BOARD, THE BOOKMAKERS' COMMITTEE AND BETTING LEVY APPEAL TRIBUNALS/18. Betting levy appeal tribunals.

18. Betting levy appeal tribunals.

At the date at which this volume states the law, and despite the repeal of the Betting, Gaming and Lotteries Act 1963 by the Gambling Act 2005, the following provisions have effect¹. Betting levy appeal tribunals are established for the purpose of hearing appeals regarding liability to bookmaker's levy². Each tribunal consists of a chairman and two other members³. The chairman must be legally qualified and is appointed by the Lord Chancellor⁴ and the other members are appointed by the Secretary of State⁵. Each member of a tribunal holds office in accordance with the terms of the instrument under which he was appointed⁶, although the chairman of a tribunal must vacate his office on the day on which he attains the age of 70 years⁷.

The procedure of a tribunal is such as the Lord Chancellor may by rules prescribe⁸. The Horserace Betting Levy Board (the 'Levy Board')⁹ must pay to the members of a tribunal such remuneration as the Levy Board may with the approval of the Secretary of State determine and any travelling and other expenses reasonably incurred by them as members of the tribunal¹⁰. The Levy Board must provide a tribunal with such secretarial and other facilities as may appear to the Levy Board to be necessary or expedient, and must pay¹¹ any expenses incurred by the tribunal for the purposes of its functions with the approval, whether general or special, of the Levy Board¹².

1 See PARA 12 note 4.

2 See the Betting, Gaming and Lotteries Act 1963 s 29(1) (amended by the Horserace Betting Levy Act 1981 Schedule para 2). Tribunals are established for the purposes of the Betting, Gaming and Lotteries Act 1963 s 28 and the Horserace Betting Levy Act 1981 s 2: see PARAS 16-17.

3 Betting, Gaming and Lotteries Act 1963 s 29(2).

4 See the Betting, Gaming and Lotteries Act 1963 s 29(2)(a) (amended by the Courts and Legal Services Act 1990 Sch 10 para 16; the Tribunals, Courts and Enforcement Act 2007 Sch 10 Pt 2 paras 45, 48(1), (2)). The chairman must satisfy the judicial-appointment eligibility condition on a five-year basis: see the Betting, Gaming and Lotteries Act 1963 s 29(2)(a)(i) (substituted by the Tribunals, Courts and Enforcement Act 2007 Sch 10 Pt 2 para 48(1)(a)). As to the judicial-appointment eligibility condition see the Tribunals, Courts and Enforcement Act 2007 s 50.

5 Betting, Gaming and Lotteries Act 1963 s 29(2)(b). As to the Secretary of State see PARA 2.

6 Betting, Gaming and Lotteries Act 1963 s 29(2). This is subject, in the case of the chairman, to s 29(2A) (see the text and note 7): s 29(2) (amended by the Judicial Pensions and Retirement Act 1993 Sch 6 para 48).

7 Betting, Gaming and Lotteries Act 1963 s 29(2A) (added by the Judicial Pensions and Retirement Act 1993 Sch 6 para 48). The Betting, Gaming and Lotteries Act 1963 s 29(2A) is expressed to be subject to the Judicial Pensions and Retirement Act 1993 s 26(4)-(6) (power to authorise continuance in office up to the age of 75 years) (see **COURTS** vol 10 (Reissue) PARA 535): see the Betting, Gaming and Lotteries Act 1963 s 29(2A) (as so added).

8 Betting, Gaming and Lotteries Act 1963 s 29(3). As to the prescribed procedure see the Betting Levy Appeal Tribunal (England and Wales) Rules 1963, SI 1963/748; and PARAS 16-17.

9 As to the constitution, continued existence and prospective dissolution of the Horserace Betting Levy Board see PARA 12.

- 10 Betting, Gaming and Lotteries Act 1963 s 29(4).
- 11 le without prejudice to the Betting, Gaming and Lotteries Act 1963 s 29(7): see PARA 16.
- 12 See the Betting, Gaming and Lotteries Act 1963 s 29(5).

UPDATE

1-18 Scope of the title ... Betting levy appeal tribunals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(iii) Other Relevant Bodies

A. THE ALCOHOL EDUCATION AND RESEARCH COUNCIL

19. Establishment and constitution of the Alcohol Education and Research Council.

The Alcohol Education and Research Council ('the Council') is a body corporate¹ which consists of not fewer than nine and not more than 15 members², one of whom must be appointed chairman³. The Council is not to be regarded as acting on behalf of the Crown⁴.

A member⁵ holds and vacates his office in accordance with the terms of his appointment⁶. A person may not be appointed a member for more than three years but a person who ceases or has ceased to be a member may be re-appointed⁷. However, a person may not be re-appointed a member for a period such that his total period or periods of membership exceeds, or exceed in aggregate, six years⁸. A member may resign by notice in writing to the Secretary of State⁹. The Secretary of State may terminate the appointment of a member¹⁰ if he is satisfied that:

- 84 (1) for a period of six months beginning not more than nine months previously he has, without the consent of the other members, failed to attend the meetings of the Council¹¹;
- 85 (2) he is an undischarged bankrupt or has made an arrangement with his creditors¹²;
- 86 (3) he is by reason of physical or mental illness, or for any other reason, incapable of carrying out his duties¹³; or
- 87 (4) he has been convicted of such a criminal offence, or his conduct has been such, that it is not in the Secretary of State's opinion fitting that he should remain a member¹⁴.

Subject to the following provisions, the chairman of the Council holds and vacates his office in accordance with the terms of his appointment¹⁵. He may resign his office by notice in writing to the Secretary of State¹⁶. A member who ceases or has ceased to be chairman may be re-appointed to that office¹⁷ and if the chairman ceases to be a member he also ceases to be chairman¹⁸.

All administrative and other expenses incurred by the Council in discharging its functions are charged on the funds in its hands from time to time¹⁹.

The Council must discharge its functions in accordance with such arrangements as it may determine²⁰. Those arrangements may provide for any function to be discharged under the general direction of the Council by a committee or committees consisting of three or more members and anything done by such a committee, if the arrangements so provide, has effect as if done by the Council²¹. The validity of any proceedings of the Council is not affected by any vacancy among the members or by any defect in the appointment of a member²².

As soon as practicable after the end of each financial year²³, the Council must make a report to the Secretary of State on its activities during that year²⁴. If at any time it appears to the Secretary of State that the assets of the Alcohol Education and Research Fund are exhausted,

and the Council has no other functions to discharge under the Licensing (Alcohol Education and Research) Act 1981, he may by order made by statutory instrument dissolve the Council²⁵.

On receiving the assets of a compensation fund²⁶ the liquidator²⁷ was required to divide the assets into three funds in specified proportions²⁸ between the Alcohol Education and Research Fund²⁹, for other charitable purposes³⁰, and for making repayments³¹.

It is the duty of the liquidator and of the Council³²:

- 88 (a) to keep proper accounts and proper records in relation to the accounts³³; and
 - 89 (b) to prepare in respect of each financial year a statement of accounts which:
- 3
- 3. (i) in the case of the liquidator, gives a full and true account of his receipts and payments and of any other acts and dealings during the year³⁴; and
 - 4. (ii) in the case of the Council, gives a true and fair view of the state of its affairs at the end of the year and of its income and expenditure for the year³⁵.
- 4

The Council must send a copy of the statement of accounts prepared by it under head (b) above in respect of each financial year ending on or after 31 March 2005³⁶ to the Comptroller and Auditor General as soon as reasonably practicable after the end of the financial year to which the statement relates³⁷. The Comptroller and Auditor General must examine, certify and report on each statement of accounts so sent to him by the Council and must lay a copy of the statement and his report on it before each House of Parliament³⁸.

1 See the Licensing (Alcohol Education and Research) Act 1981 s 6(1).

2 See the Licensing (Alcohol Education and Research) Act 1981 s 6(2).

3 See the Licensing (Alcohol Education and Research) Act 1981 s 6(3).

4 Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 2.

5 'Member' means a member of the Council: Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 1.

6 Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 3(1).

7 See the Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 3(2).

8 Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 3(3).

9 Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 3(4). As to the Secretary of State see PARA 2.

10 Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 3(5).

11 Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 3(5)(a).

12 Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 3(5)(b).

13 Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 3(5)(c).

14 Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 3(5)(d).

15 See the Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 4(1).

16 Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 4(2).

17 Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 4(3).

18 Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 4(4).

- 19 Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 5.
- 20 Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 6(1).
- 21 Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 6(2).
- 22 Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 6(3). The arrangements made under Sch 1 para 6 may include provisions specifying a quorum for meetings of the council and any committee; and, until a quorum is so specified in relation to meetings of the council, the quorum for such meetings is such as may be determined by the Secretary of State: Sch 1 para 6(4).
- 23 'Financial year' means the 12 months ending with 31 March: Licensing (Alcohol Education and Research) Act 1981 s 12(1).
- 24 Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 7.
- 25 Licensing (Alcohol Education and Research) Act 1981 Sch 1 para 8. At the date at which this volume states the law, no such order had been made.
- 26 After the commencement of the Licensing (Alcohol Education and Research) Act 1981: (1) no application for the renewal, transfer or removal of an old on-licence could be referred by the licensing justices to the compensation authority under the Licensing Act 1964 s 13 (repealed); (2) no proposed surrender of such a licence could be so referred under the Licensing Act 1964 s 18(1)(b) (repealed); and (3) the powers of compensation authorities under the Licensing Act 1964 s 17 (repealed) to impose charges for the benefit of their compensation fund and to borrow for the purpose of paying compensation were no longer exercisable: see the Licensing (Alcohol Education and Research) Act 1981 s 1(1). Provision was made for a liquidator to be appointed to perform certain functions in connection with the assets of compensation funds: see s 2(1). As to the remuneration and expenses to be paid to the liquidator see s 2(2)-(4); and as to the final accounts of authorities and the powers of the liquidator see s 3 (amended by SI 2002/1555).
- 27 'The liquidator' means the person appointed by the Secretary of State under the Licensing (Alcohol Education and Research) Act 1981 s 2 (see note 26): see s 12(1).
- 28 See the Licensing (Alcohol Education and Research) Act 1981 s 5(2).
- 29 See the Licensing (Alcohol Education and Research) Act 1981 s 5(1)(a). As to the Alcohol Education and Research Fund see PARA 20.
- 30 In accordance with the Licensing (Alcohol Education and Research) Act 1981 s 8: see s 5(1)(b). As to charitable purposes connected with the licensed trade see s 8.
- 31 See the Licensing (Alcohol Education and Research) Act 1981 s 5(1). The repayments referred to in the text are repayments made under s 9: see s 5(1). As to the application of funds in the hands of the liquidator see also s 5(3)-(5). As to the repayment scheme see s 9.
- 32 Licensing (Alcohol Education and Research) Act 1981 s 10(1).
- 33 Licensing (Alcohol Education and Research) Act 1981 s 10(1)(a).
- 34 Licensing (Alcohol Education and Research) Act 1981 s 10(1)(b)(i).
- 35 Licensing (Alcohol Education and Research) Act 1981 s 10(1)(b)(ii). See also note 36.
- 36 In respect of earlier financial years, as soon as might be after the end of each financial year, the Council was to have the accounts and the statement for the year audited by a qualified auditor and, as soon as the accounts and statement had been audited, to send to the Secretary of State a copy of the statement together with a copy of any report by the auditor on the statement or on the accounts: see the Licensing (Alcohol Education and Research) Act 1981 s 10(1)(c), (d) (disapplied in respect of a financial year ending on or after 31 March 2005, or accounts, or a statement of accounts, relating to such a financial year, by s 10(1A) (added by SI 2003/1326).
- 37 Licensing (Alcohol Education and Research) Act 1981 s 10(3) (s 10(3), (4) added by SI 2003/1326).
- 38 Licensing (Alcohol Education and Research) Act 1981 s 10(4) (as added: see note 37).

UPDATE

19 Establishment and constitution of the Alcohol Education and Research Council

TEXT AND NOTES 5-19--See the Licensing (Alcohol Education and Research) Act 1981 Sch 1 paras 3A, 3B, which empower the Secretary of State to suspend a member, and Sch 1 paras 4(4), 4A, which makes provision in the case of the suspension of the chairman (Sch 1 paras 3A, 3B, 4(4), 4A added, para 4(1) amended by the Health Act 2009 Sch 3 para 2).

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20. The Alcohol Education and Research Fund.

The Alcohol Education and Research Fund is vested in and administered by the Alcohol Education and Research Council ('the Council')¹. The fund is applied for such charitable purposes in the United Kingdom² as the Council may determine from time to time from among the following³:

- 90 (1) the education of the public as to the causes and effects of, and means of preventing, excessive consumption of alcohol⁴;
- 91 (2) the care and rehabilitation of persons convicted of offences involving drunkenness⁵;
- 92 (3) the provision of treatment and other help for persons dependent on alcohol or given to excessive consumption of alcohol⁶;
- 93 (4) research into matters relevant to any of the purposes mentioned in heads (1) to (3) above and the publication of the results of such research⁷.

In determining how the fund is to be applied for the purposes mentioned in heads (2) and (3) above, the Council is to give priority to support for novel schemes for achieving those purposes⁸.

The Council may make grants from the fund either for specific charitable projects or in aid generally of the finances of an organisation established for charitable purposes only which is concerned with any of the purposes specified in heads (1) to (4) above⁹.

Any sums in the fund which are not immediately required for any other purpose may be invested by the Council in accordance with the Trustee Act 2000¹⁰. The fund may be applied by the Council without distinction between capital and income¹¹.

The Welsh Language Board may require the fund to produce a Welsh language scheme under Part II¹² of the Welsh Language Act 1993¹³.

1 Licensing (Alcohol Education and Research) Act 1981 s 7(1).

2 As to the meaning of 'United Kingdom' see PARA 16 note 8.

3 Licensing (Alcohol Education and Research) Act 1981 s 7(2).

4 Licensing (Alcohol Education and Research) Act 1981 s 7(2)(a).

5 Licensing (Alcohol Education and Research) Act 1981 s 7(2)(b).

6 Licensing (Alcohol Education and Research) Act 1981 s 7(2)(c).

7 Licensing (Alcohol Education and Research) Act 1981 s 7(2)(d).

8 Licensing (Alcohol Education and Research) Act 1981 s 7(3).

9 Licensing (Alcohol Education and Research) Act 1981 s 7(4). As to charitable purposes see **CHARITIES** vol 8 (2010) PARA 1 et seq.

10 Licensing (Alcohol Education and Research) Act 1981 s 7(5) (substituted by the Trustee Act 2000 Sch 2 Pt II para 40). Such investment by the council may be in any investments in which trustees may invest under the general powers of investment under the Trustee Act 2000 s 3, as restricted by ss 4-5 (see **TRUSTS** vol 48 (2007 Reissue) PARAS 1012-1014); see the Licensing (Alcohol Education and Research) Act 1981 s 7(5) (as so substituted).

11 Licensing (Alcohol Education and Research) Act 1981 s 7(6).

12 le under the Welsh Language Act 1993 Pt II (ss 5-21).

13 See the Welsh Language Schemes (Public Bodies) Order 1999, SI 2008/1999, art 2, Schedule Pt I.

UPDATE

20 The Alcohol Education and Research Fund

NOTE 13--For SI 2008/1999 read SI 1999/1100.

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B. THE THEATRES TRUST

21. The Theatres Trust.

The Theatres Trust ('the Trust') is established to promote the better protection of theatres for the benefit of the nation¹. The trust is a body corporate having perpetual succession and a common seal². The affairs and property³ of the trust are managed and administered by the trustees⁴. There must be 15 trustees appointed by the Secretary of State⁵, who appoints one of them to be chairman and one to be deputy chairman of the trustees⁶. In appointing the trustees the Secretary of State must have regard to the desirability of securing the services of persons with knowledge and experience of:

- 94 (1) the ownership of theatres⁷;
- 95 (2) the production of plays⁸;
- 96 (3) employment in, or in connection with, plays;
- 97 (4) organisations established for the encouragement of the arts;
- 98 (5) local government;
- 99 (6) planning;
- 100 (7) commercial or financial matters; or
- 101 (8) safeguarding the interests of the environment⁹.

The Secretary of State must satisfy himself that any person whom he proposes to appoint to be a trustee will have or has, as the case may be, no such financial or other interest as is likely to affect him in the discharge of his functions as a trustee; and any such person must, whenever requested by the Secretary of State to do so, give the Secretary of State such information as he considers necessary for the performance of this duty¹⁰. Before appointing a person to be a trustee the Secretary of State must consult such bodies, if any, as appear to him to be representative of such of the interests mentioned in heads (1) to (8) above as may be concerned¹¹.

The term of office of the trustees is three years¹². If a trustee fails throughout a period of two years to attend any meeting of the trustees then unless the failure was due to some reason approved by the trustees he ceases to be a trustee¹³. A trustee may at any time, by notice in writing addressed to the Secretary of State, resign his office¹⁴ and a person ceasing to be a trustee is eligible for re-appointment¹⁵. A person appointed by the Secretary of State to fill a casual vacancy holds office until the date upon which the trustee whose vacancy he has filled would have regularly retired¹⁶.

In every year the trustees must hold an annual meeting and at least one other meeting¹⁷. Each year at the annual meeting the trustees must appoint an executive committee and may appoint such other committees composed of the trustees for any such general or special purpose as in the opinion of the trustees would be better regulated and managed by means of a committee; and they may delegate to the executive committee or such other committee so appointed, with or without restrictions as they think fit, any functions of the trustees¹⁸. The executive committee must consist of not more than eight trustees and any other committee of the trustees must consist of such numbers of trustees as the trustees may determine¹⁹.

The powers of the trustees and any committee of the trustees may be exercised notwithstanding any vacancy and no proceedings of the trustees or of any committee of the trustees are invalidated by any defect in the appointment of a trustee²⁰.

The trustees have power from time to time to make, alter and revoke regulations with respect to the management and administration of the trust property, the holding of meetings of the trustees, the executive committee and any other committee of the trustees, the conduct of proceedings at those meetings, including quorum, and for all other purposes necessary for the execution of the Trust²¹.

The trustees must keep proper accounts of all sums received or paid by them and proper records in relation to those accounts and the accounts for each financial year of the Trust must be audited by an auditor or auditors appointed by the trustees²².

1 See the Theatres Trust Act 1976 ss 1(1), 2(1), 5.

2 Theatres Trust Act 1976 s 1(1).

3 'The trust property' means the stocks, shares and other securities, sums of money and other property for the time being held by the trustees for the purposes of the trust: Theatres Trust Act 1976 s 5.

4 Theatres Trust Act 1976 s 1(2). 'The trustees' means the trustees appointed under the provisions of the Schedule: s 5.

5 As to the Secretary of State see PARA 2.

6 Theatres Trust Act 1976 Schedule para 1 (Schedule paras 1, 2-4, 7, 9 amended by virtue of SI 1992/1311). One of the trustees must be a person who appears to the Secretary of State to have special knowledge of Scotland; but before appointing any person to be a trustee pursuant to this provision, the Secretary of State must consult the Scottish Ministers: Theatres Trust Act 1976 Schedule para 1A (added by SI 2000/1102).

7 For these purposes, 'theatre' means any building or part of a building constructed wholly or mainly for the public performance of plays: Theatres Trust Act 1976 s 5.

8 As to the meaning of 'play' see PARA 244 (definition applied by the Theatres Trust Act 1976 s 5).

9 Theatres Trust Act 1976 Schedule para 2 (as amended: see note 6).

10 Theatres Trust Act 1976 Schedule para 3 (as amended: see note 6).

11 Theatres Trust Act 1976 Schedule para 4 (as amended (see note 6); also amended by SI 2000/1102).

12 Theatres Trust Act 1976 Schedule para 5.

13 Theatres Trust Act 1976 Schedule para 6. Attendance at a meeting of the executive committee or any other committee of the trustees to which any functions of the trustees have been delegated (see the text and note 18) is deemed for these purposes to be attendance at a meeting of the trustees: Schedule para 6 proviso.

14 Theatres Trust Act 1976 Schedule para 7 (as amended: see note 6).

15 Theatres Trust Act 1976 Schedule para 8.

16 Theatres Trust Act 1976 Schedule para 9 (as amended: see note 6).

17 Theatres Trust Act 1976 Schedule para 10.

18 Theatres Trust Act 1976 Schedule para 11(1).

19 Theatres Trust Act 1976 Schedule para 11(2).

20 Theatres Trust Act 1976 Schedule para 12.

21 Theatres Trust Act 1976 Schedule para 13.

22 Theatres Trust Act 1976 Schedule para 14(1). No person may be appointed as an auditor for these purposes unless he is eligible for appointment as a statutory auditor under the Companies Act 2006 Pt 42: Theatres Trust Act 1976 Schedule para 14(2) (substituted by SI 1991/1997; amended by SI 2008/948).

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22. Objects of the Theatres Trust and powers of the trustees.

The objects of the Theatres Trust¹ are to promote the better protection of theatres² for the benefit of the nation³. The trustees⁴ of the Trust have power, exclusively for the furtherance of those objects⁵, to:

- 102 (1) acquire⁶ any theatre or any land required for the benefit of any theatre⁷;
- 103 (2) contribute towards such acquisition⁸;
- 104 (3) maintain or assist in the maintenance of any theatre⁹;
- 105 (4) from time to time sell, mortgage, charge, let, surrender, exchange or otherwise dispose of any land or any personal estate or property (including moneys secured on mortgage of, or charged upon, any land) vested in or acquired by the trustees or any part of it or any easements, rights or privileges to be exercised or enjoyed in, over, upon or under the same or any part of it, and do and execute all such acts, deeds, matters and things as may be necessary for effectuating and completing any such sale, mortgage, charge, letting, surrender, exchange or disposition¹⁰;
- 106 (5) print, publish and sell literature, pictures and photographs and other things relating to the trust property¹¹;
- 107 (6) give financial and other assistance to any body whose objects are charitable and similar to those of the trust, and give such assistance in connection with any function or scheme for a purpose which is both charitable and similar to an object of the trust¹²;
- 108 (7) co-operate with other persons engaged in activities similar to those of the objects of the trust and, in connection with this, provide for the interchange of staff¹³;
- 109 (8) accept, receive and retain legacies, gifts, grants, annuities and other benefits and consistently with the objects of the trust, but not otherwise, undertake and perform any services or conditions attached to such receipts¹⁴;
- 110 (9) raise or borrow money for the purposes of the trust and secure the same and any interest on it upon the property of the trust¹⁵;
- 111 (10) make appeals, advertise and conduct such other lawful activities of a similar nature as may be necessary to raise funds for the trust or to make known its existence, purposes or work¹⁶;
- 112 (11) do all such other things as are incidental to the attainment of the objects of the trust¹⁷.

The trustees also have power:

- 113 (a) to appoint a director, a secretary and such other officers and servants as they may determine¹⁸;
- 114 (b) to pay to the trustees such travelling and subsistence allowances while attending meetings of the trustees or any committee of the trustees, or while on any other business of the trustees, as they may determine¹⁹;
- 115 (c) to pay to its officers and servants such remuneration as they may determine²⁰;

116 (d) as regards any officers or servants in whose case they may determine to do so:

5

5. (i) to pay to, or in respect of them, such pensions and gratuities as they may determine;
6. (ii) to provide and maintain for them such superannuation schemes (whether contributory or not) as they may determine; or
7. (iii) to enter into and carry into effect agreements with any insurance company or other association or company for securing to any such officer or servant or his surviving spouse, surviving civil partner, family or dependant such gratuities or pensions as are authorised to be paid²¹.

6

1 As to the Theatres Trust see PARA 21.

2 As to the meaning of 'theatre' see PARA 21 note 7.

3 Theatres Trust Act 1976 s 2(1).

4 As to the meaning of 'the trustees' see PARA 21 note 4.

5 Theatres Trust Act 1976 s 2(2).

6 The acquisition may be by purchase, gift or bequest: Theatres Trust Act 1976 s 2(2)(a).

7 Theatres Trust Act 1976 s 2(2)(a).

8 Theatres Trust Act 1976 s 2(2)(b).

9 Theatres Trust Act 1976 s 2(2)(c).

10 Theatres Trust Act 1976 s 2(2)(d) (amended by the Charities Act 1993 Sch 6 para 14), which is expressed to be subject to the provisions of the Charities Act 1993 ss 36, 38 (see **CHARITIES** vol 8 (2010) PARAS 395, 398).

11 Theatres Trust Act 1976 s 2(2)(e). As to the meaning of 'the trust property' see PARA 21 note 3.

12 Theatres Trust Act 1976 s 2(2)(f).

13 Theatres Trust Act 1976 s 2(2)(g).

14 Theatres Trust Act 1976 s 2(2)(h).

15 Theatres Trust Act 1976 s 2(2)(i).

16 Theatres Trust Act 1976 s 2(2)(j).

17 Theatres Trust Act 1976 s 2(2)(k).

18 Theatres Trust Act 1976 s 3(a).

19 Theatres Trust Act 1976 s 3(b).

20 Theatres Trust Act 1976 s 3(c).

21 Theatres Trust Act 1976 s 3(d) (amended by the Civil Partnership Act 2004 Sch 25 para 4).

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C. BODIES CONCERNED WITH THE FILM INDUSTRY

23. The British Board of Film Classification.

The British Board of Film Censors was set up in 1912 by the film industry in order to classify films for exhibition. It was given statutory powers to classify video works¹ as the designated authority under the Video Recordings Act 1984², at which point the name of the organisation was changed to the British Board of Film Classification. Unlike the Board's classification certificates in respect of video works for home viewing, its classification certificates in respect of films for exhibition have no legal force and the final decision as to whether or not a film is suitable for viewing rests with the local licensing authority³.

The British Board of Film Classification maintains an internet site where full details of its structure and functions may be found, together with recent film classification decisions⁴. It also maintains separate internet sites of particular interest to parents, teachers and students of film⁵. The Board has established an independent body, the Video Appeals Committee, to hear appeals against its determinations with regard to the classification of video works⁶.

1 As to the meaning of 'video work' see PARA 276 note 3. Note that the majority of video games are exempt from classification: see PARA 277.

2 See the Video Recordings Act 1984 s 4; and PARA 279.

3 As to the final decision of the licensing authority on what films are to be shown see the Licensing Act 2003 ss 20(3), 74(3); and PARAS 57, 93.

4 At the date at which this volume states the law, that site was accessible at www.bbfc.co.uk.

5 At the date at which this volume states the law, those sites were accessible at (1) www.parentsbbfc.co.uk (information for parents about the content of films, DVDs and games); (2) www.cbbfc.co.uk (information for teachers and parents of young children); and (3) www.sbbfc.co.uk (information for students and media studies teachers).

6 As to the Video Appeals Committee see PARA 281.

UPDATE

23 The British Board of Film Classification

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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24. The Film Industry Training Board for England and Wales.

The Film Industry Training Board for England and Wales ('the Board') is established as an industrial training board to exercise the statutory functions¹ of such a board in relation to the following activities of the film industry, in so far as they are carried out in England and Wales²:

- 117 (1) all activities in the development³, pre-production⁴, principal photography⁵ or post-production⁶ of a film intended for theatrical release⁷;
- 118 (2) any activities being incidental or ancillary to the activities specified in head (1) above carried out by, or on behalf of, the employer engaged in those activities⁸.

The Secretary of State⁹ must determine the term for which each member of the Board is appointed and, subject to the following provisions, a member holds and vacates office in accordance with the instrument appointing him as such¹⁰. A member is eligible for re-appointment¹¹ and may resign his office by notifying the Secretary of State in writing¹². The Secretary of State may determine a member's office to be vacant:

- 119 (a) if he is absent from meetings of the Board for more than six months consecutively for a reason other than illness and without the approval of the Secretary of State; or
- 120 (b) if he becomes, in the Secretary of State's opinion, unfit to continue in office or incapable of performing his duties¹³.

Where the Secretary of State makes a determination under head (b) above he must notify, in such form as he considers appropriate, the relevant member and the Board of that determination and the relevant office becomes vacant on the date specified by the Secretary of State in the notice so given¹⁴.

The Board must have an office at which communications and notices will at all times be received¹⁵. It must notify the Secretary of State in writing of the address of that office and of any subsequent change to that address¹⁶.

The quorum for a meeting of the Board is one third of the members or, if the number of members so calculated results in a fraction, the nearest higher whole number of the members¹⁷. The chairman or, if the chairman is absent, the deputy chairman must preside at all meetings¹⁸. Where a resolution relating to a matter other than the imposition of a levy is put to a vote at a meeting, it is to be decided on a show of hands of the members present¹⁹. Where a resolution relating to the imposition of a levy is put to a vote at a meeting it is to be decided on a show of hands of eligible members present at that meeting, or, if an eligible member demands a poll, on a poll²⁰. Each eligible member has one vote²¹.

Minutes must be kept of all proceedings of the Board²². If they are signed by a qualifying person²³, minutes are evidence of the proceedings of a meeting and, unless proved otherwise, evidence that a meeting was properly convened and constituted²⁴. The seal of the Board is authenticated by the signature of:

- 121 (i) the chairman of the Board or any member authorised to act on his behalf; and
- 122 (ii) the secretary of the Board or any member authorised to act as secretary of the Board²⁵.

1 le the functions conferred on industrial training boards by the Industrial Training Act 1982: see **EMPLOYMENT** vol 40 (2009) PARA 587 et seq.

2 See the Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, arts 3, 4, Sch 1 para 1.

3 For these purposes, 'development' means progressing a proposal for a film to the point at which a decision can be taken as to whether to proceed to pre-production of that film; and 'film' means any record, however made, of a sequence of visual images that is capable of being used as a means of showing that sequence as a moving picture: Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 1 para 4(1).

4 'Pre-production' means preparation for principal photography: Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 1 para 4(1).

5 'Principal photography' means the shooting of a film and recording of its soundtrack: Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 1 para 4(1). References to shooting include the generation of images in a film by computer: Sch 1 para 4(3).

6 'Post-production' means ensuring, after principal photography, that the film and its soundtrack are ready for theatrical release: Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 1 para 4(1).

7 'Theatrical release' means exhibition to the paying public at the commercial cinema: Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 1 para 4(1). For these purposes, a film is intended for theatrical release (1) if it is intended at the time when pre-production of that film begins that it will be given a theatrical release; and (2) even if it is not given such a release: Sch 1 para 4(2).

8 Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 1 para 2(1), (2). The activities specified in Sch 1 para 2 do not, however, include any of the activities specified (1) as activities of the construction industry in the Industrial Training (Construction Board) Order 1964, SI 1964/1079, Sch 1; (2) as activities of the engineering construction industry in the Industrial Training (Engineering Board) Order 1964, SI 1964/1086, Sch 1: Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 1 para 3.

9 As to the Secretary of State see PARA 2. At the date at which this volume states the law, the Secretary of State here concerned was the Secretary of State for Innovation, Universities and Skills.

10 Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 2 para 1.

11 Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 2 para 2.

12 Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 2 para 3(1). A notice given under Sch 2 para 3(1) takes effect on the date appointed by the Secretary of State: Sch 2 para 3(2).

13 Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 2 para 4(1).

14 Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 2 para 4(2).

15 Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 2 para 5(1).

16 Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 2 para 5(2).

17 Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 2 para 6.

18 Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 2 para 7(1). Despite Sch 2 para 7(1), if the chairman or any deputy chairman is not present at any meeting within ten minutes of the time at which that meeting was due to start, the members present must nominate one of their number to act as chairman for that meeting: Sch 2 para 7(2).

19 Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 2 para 8(1). Each member has one vote and if the votes are equally divided, the chairman (or person acting as chairman for that meeting) has a second or casting vote: Sch 2 para 8(2).

20 Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 2 para 9(1). This is subject to the Industrial Training Act 1982 Sch 1 para 6 (see **EMPLOYMENT** vol 40 (2009) PARA 591); Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 2 para 9(1). An eligible member present and voting at the meeting at which a resolution relating to the imposition of a levy is put to a vote may demand a poll either before or on the declaration of the result on the show of hands: Sch 2 para 9(2). Where a poll is so demanded, that poll is to be carried out immediately and votes may be given personally or by valid proxy: Sch 2 para 9(3). Subject to Sch 2 para 9(5), a vote is given by valid proxy if it is given in accordance with a qualifying instrument of proxy (as to which see Sch 2 para 12): Sch 2 para 9(4). A vote is not given by valid proxy if it is given in accordance with an instrument of proxy in relation to which there is a disqualifying notice (as to which see Sch 2 para 12): Sch 2 para 9(5).

21 Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 2 para 9(6).

22 Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 2 para 10(1).

23 'Qualifying person' means (1) the chairman; (2) the person who acted as chairman of the meeting in respect of which the minutes were taken; or (3) the person who acted as chairman at the meeting at which the minutes were read: Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 2 para 12.

24 Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 2 para 10(2).

25 Industrial Training (Film Industry Training Board for England and Wales) Order 2007, SI 2007/3148, Sch 2 para 11.

UPDATE

24 The Film Industry Training Board for England and Wales

NOTE 9--The Secretary of State for Innovation, Universities and Skills has been redesignated as the Secretary of State for Business, Innovation and Skills: see the Secretary of State for Business, Innovation and Skills Order 2009, SI 2009/2748.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/1. INTRODUCTION/(2) REGULATORY AUTHORITIES AND OTHER BODIES/(iii) Other Relevant Bodies/C. BODIES CONCERNED WITH THE FILM INDUSTRY/25. The UK Film Council.

25. The UK Film Council.

The UK Film Council is a private company limited by guarantee established on a non-statutory basis and funded by government grants and by funds received from the National Lottery¹. The Council maintains an internet site where details of its aims and policies, and the bodies which it funds, may be found².

¹ The UK Film Council is one of the 'distributing bodies' for the purposes of the National Lottery: see PARA 721.

² At the date at which this volume states the law, that site was accessible at www.ukfilmcouncil.org.uk.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(1) THE LICENSING ACT 2003; IN GENERAL/(i) Introduction/26. Outline of the legislation.

2. ALCOHOL ETC AND ENTERTAINMENT LICENSING

(1) THE

(i) Introduction

26. Outline of the legislation.

The Licensing Act 2003 provides a unified system of regulation of the activities of the sale and supply of alcohol¹, the provision of regulated entertainment² and the provision of late night refreshment³. This system replaces the former system, principally under the Licensing Act 1964 and the London Government Act 1963, the Late Night Refreshment Houses Act 1969 and the Local Government (Miscellaneous Provisions) Act 1982⁴, and promotes four fundamental licensing objectives⁵. The new system of regulation operates through the issuing of personal licences⁶, premises licences⁷, club premises certificates⁸ and temporary event notices⁹.

In contrast to the previous law, the Licensing Act 2003 does not prescribe the days or opening hours when alcohol may be sold by retail for consumption on or off premises, nor does it specify when other licensable activities may be carried on. Instead, the applicant for a premises licence or a club premises certificate is able to choose the days and hours during which he wishes to be authorised to carry on licensable activities at the premises for which a licence is sought. A licence or certificate will be granted on those terms unless, following the making of representations to the licensing authority¹⁰, the authority considers it necessary to reject the application or vary the proposed terms for the purpose of promoting the licensing objectives. Generally, both a premises licence and a personal licence are required for the sale and supply of alcohol.

Licences and certificates are granted by the licensing authorities under the Licensing Act 2003, replacing the licensing justices who regulated the sale and supply of alcohol under the previous legislation. The licensing authority is usually the local authority for the area in which the premises are situated, or in which the individual applicant for a personal licence is normally resident.

The Licensing Act 2003 confers the power on the police to close licensed premises in certain circumstances¹¹. These provisions re-enact with some modifications the provisions under the previous legislation¹². The new licensing regime is also supported by a range of offences and penalties¹³.

The provisions of the Licensing Act 2003 apply to the Crown and to Crown property¹⁴. The historical exemptions and privileges previously enjoyed by the University of Cambridge and the Vintners of the City of London¹⁵ are removed by the Licensing Act 2003¹⁶.

The provisions of the Licensing Act 2003 were brought into force piecemeal by a series of commencement orders¹⁷. With minor exceptions¹⁸, all the provisions of the 2003 Act were fully in force on 24 November 2005¹⁹.

1 As to the meaning of 'alcohol' see PARA 30.

2 As to the provision of regulated entertainment see PARA 31.

3 As to the provision of late night refreshment see PARA 32. The activities described in the text are the 'licensable activities': see PARA 28.

4 The Licensing Act 2003 Sch 7 repeals a large number of provisions and statutes (including some that are now spent), while Sch 6 contains a number of minor and consequential amendments. The repeal of an enactment by the Licensing Act 2003 Sch 7 does not affect (1) an entitlement to bring an appeal pursuant to the enactment, if the entitlement existed immediately before 24 November 2005 ('the second appointed day'); (2) the conduct and determination of an appeal brought before that day pursuant to the enactment: Licensing Act 2003 (Commencement No 7 and Transitional Provisions) Order 2005, SI 2005/3056, arts 1, 4(1). In connection with an appeal brought or continued in reliance on art 4(1), the court to which the appeal is brought has the same jurisdiction, powers and obligations as it would have had before 24 November 2005 and the parties to the appeal have the same rights and obligations as they would have had before that day: art 4(2).

The Licensing Act 2003 Sch 8 makes transitional and transitory provisions and savings enabling holders of licences under the previous legislation to apply for the conversion of those licences to licences under the new system. See Sch 8 Pt 1 (paras 1-12) (conversion of certain existing licences to premises licences under the 2003 Act); Sch 8 Pt 2 (paras 13-22) (conversion of certain existing certificates to club premises certificates under the 2003 Act); Sch 8 Pt 3 (paras 23-28) (transitional arrangements where the holder of a justices' licence under the previous legislation applied for a personal licence under the 2003 Act). The time for making all such transitional applications has now expired.

5 As to the licensing objectives see PARA 35.

6 See PARA 114 et seq.

7 See PARA 53 et seq.

8 See PARA 85 et seq.

9 See PARA 108 et seq.

10 As to the licensing authorities see PARA 3.

11 See PARA 168 et seq.

12 See the Licensing Act 1964 ss 179A-179K, 188 (repealed).

13 See PARA 132 et seq.

14 See PARA 27. Activities carried out at royal palaces are not, however, 'licensable activities': see s 173(1)(e); and PARA 28.

15 See those preserved by the Licensing Act 1964 s 199(a), (b) (repealed).

16 See the Licensing Act 2003 s 196; and PARA 27.

17 See the Licensing Act 2003 s 201(2) and the commencement orders made thereunder.

18 At the date at which this volume states the law, the repeals of the Sporting Events (Control of Alcohol etc) Act 1985 ss 2(1A), s 5A by the Licensing Act 2003 Sch 6 paras 98, 99(c), Sch 7 were not in force.

19 See the Licensing Act 2003 (Commencement No 7 and Transitional Provisions) Order 2005, SI 2005/3056, arts 1, 2(2).

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(1) THE LICENSING ACT 2003; IN GENERAL/(i) Introduction/27. Application of the legislation.

27. Application of the legislation.

The Licensing Act 2003¹ binds the Crown and has effect in relation to land² in which there is:

- 123 (1) an interest belonging to Her Majesty in right of the Crown;
- 124 (2) an interest belonging to a government department; or
- 125 (3) an interest held in trust for Her Majesty for the purposes of such a department³.

The 2003 Act also applies to land which is vested in, but not occupied by, Her Majesty in right of the Duchy of Lancaster, and land which is vested in, but not occupied by, the possessor for the time being of the Duchy of Cornwall⁴. Nothing in the Act, however, affects Her Majesty in Her private capacity⁵.

Provision made by or under the 2003 Act applies to persons in the public service of the Crown as it applies to other persons⁶.

No contravention by the Crown of any provision made by or under the 2003 Act makes the Crown criminally liable; but the High Court may declare unlawful any act or omission of the Crown which constitutes such a contravention⁷.

Certain old privileges formerly enjoyed by the University of Cambridge and the Vintners of the City of London in respect of the sale of wine⁸ do not operate to exempt any person from the requirements of the 2003 Act⁹.

Subject to certain exceptions¹⁰, the 2003 Act applies in relation to a vessel¹¹ which is not permanently moored or berthed as if it were premises¹² situated in the place where it is usually moored or berthed¹³. Where a vehicle¹⁴ which is not permanently situated in the same place is, or is proposed to be, used for one or more licensable activities¹⁵ while parked at a particular place, the vehicle is to be treated for the purposes of the 2003 Act as if it were premises situated at that place¹⁶; and where a movable structure which is not permanently situated in the same place is, or is proposed to be, used for one or more licensable activities while set in a particular place, the structure is to be treated for those purposes as if it were premises situated at that place¹⁷.

1 As to the commencement of the Licensing Act 2003 and transitional provisions see PARA 26.

2 'Land' includes buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land: Interpretation Act 1978 Sch 1.

3 Licensing Act 2003 s 195(1).

4 Licensing Act 2003 s 195(2).

5 Licensing Act 2003 s 195(5).

6 Licensing Act 2003 s 195(4).

7 Licensing Act 2003 s 195(3). As to offences under the Licensing Act 2003 see PARA 132 et seq.

8 Ie the privileges and exemptions mentioned in the Licensing Act 1964 s 199(a), (b) (repealed).

9 Licensing Act 2003 s 196.

10 The Licensing Act 2003 ss 29-31 (which make provision in respect of provisional statements relating to premises licences: see PARAS 63-64) do not apply in relation to a vessel, vehicle or structure to which s 189 (see the text and notes 11-17) applies: s 189(5).

11 'Vessel' includes a ship, boat, raft or other apparatus constructed or adapted for floating on water: Licensing Act 2003 s 193.

12 'Premises' means any place and includes a vehicle, vessel or movable structure: Licensing Act 2003 s 193.

13 Licensing Act 2003 s 189(1).

14 'Vehicle' means a vehicle intended or adapted for use on roads: Licensing Act 2003 s 193.

15 As to the meaning of 'licensable activities' see PARA 28.

16 Licensing Act 2003 s 189(2). Where s 189(2) applies in relation to the same vehicle, in respect of more than one place, the premises which by virtue of s 189(2) are situated at each such place are to be treated as separate premises: s 189(4).

17 Licensing Act 2003 s 189(3). Where s 189(3) applies in relation to the same structure, in respect of more than one place, the premises which by virtue of s 189(3) are situated at each such place are to be treated as separate premises: s 189(4).

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(1) THE LICENSING ACT 2003; IN GENERAL/(i) Introduction/28. Licensable activities.

28. Licensable activities.

For the purposes of the Licensing Act 2003¹, the following are licensable activities:

- 126 (1) the sale by retail of alcohol²;
- 127 (2) the supply of alcohol³ by or on behalf of a club to, or to the order of, a member of the club⁴;
- 128 (3) the provision of regulated entertainment⁵; and
- 129 (4) the provision of late night refreshment⁶.

An activity is not, however, a licensable activity if it is carried on:

- 130 (a) aboard an aircraft, hovercraft or railway vehicle⁷ engaged on a journey⁸;
- 131 (b) aboard a vessel engaged on an international journey⁹;
- 132 (c) at an approved wharf¹⁰ at a designated¹¹ port or hoverport;
- 133 (d) at an examination station¹² at a designated airport;
- 134 (e) at a royal palace;
- 135 (f) at premises¹³ which, at the time when the activity is carried on, are permanently or temporarily occupied for the purposes of the armed forces of the Crown¹⁴;
- 136 (g) at premises in respect of which a national security certificate¹⁵ has effect; or
- 137 (h) at such other place as may be prescribed¹⁶.

The promotion of an incidental non-commercial lottery¹⁷ does not constitute a licensable activity by reason only of one or more of the prizes in the lottery consisting of or including alcohol, provided that the alcohol is in a sealed container¹⁸.

1 As to the commencement of the Licensing Act 2003 and transitional provisions see PARA 26.

2 As to the meanings of 'sale by retail' and 'alcohol' see PARA 30.

3 As to the meaning of 'supply of alcohol' for these purposes see PARA 53 note 18.

4 For the purposes of the Licensing Act 2003, references to the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club do not include a reference to any supply which is a sale by retail of alcohol: s 1(3).

5 The Licensing Act 2003 Sch 1 makes provision about what constitutes the provision of regulated entertainment for the purposes of the 2003 Act: s 1(4). See PARA 31.

6 Licensing Act 2003 s 1(1). Schedule 2 makes provision about what constitutes the 'provision of late night refreshment' for the purposes of the Licensing Act 2003 (including provision that certain activities carried on in relation to certain clubs or hotels etc, or certain employees, do not constitute provision of late night refreshment and are, accordingly, not licensable activities): s 1(5). See PARA 32.

Section 1 is subject to ss 173-175 (which exclude activities from the definition of licensable activity in certain circumstances) (see the text to notes 7-18): s 1(7).

7 'Railway vehicle' has the meaning given by the Railways Act 1993 s 83 (ie anything which, whether or not it is constructed or adapted to carry any person or load, is constructed or adapted to run on flanged wheels over or along railway track): Licensing Act 2003 s 173(6).

8 For the purposes of the Licensing Act 2003 s 1(1) (see heads (a)-(h) in the text), the period during which an aircraft, hovercraft, railway vehicle or vessel is engaged on a journey includes (1) any period ending with its departure when preparations are being made for the journey; and (2) any period after its arrival at its destination when it continues to be occupied by those (or any of those) who made the journey (or any part of it): s 173(2). As to the meaning of 'vessel' see PARA 27 note 11.

9 'International journey' means: (1) a journey from a place in the United Kingdom to an immediate destination outside the United Kingdom; or (2) a journey from a place outside the United Kingdom to an immediate destination in the United Kingdom: Licensing Act 2003 s 173(6). As to the meaning of 'United Kingdom' see PARA 16 note 8.

10 'Approved wharf' has the meaning given by the Customs and Excise Management Act 1979 s 20A (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 936): Licensing Act 2003 s 173(6).

11 'Designated' means designated by an order under the Licensing Act 2003 s 173(3): s 173(6). The Secretary of State may by order designate a port, hoverport or airport for the purposes of s 173(1), if it appears to him to be one at which there is a substantial amount of international passenger traffic: s 173(3). Any port, airport or hoverport where the Licensing Act 1964 s 86A or s 87 (both repealed) was in operation immediately before 24 November 2005 (ie the date when the Licensing Act 2003 s 173 came into force: see the Licensing Act 2003 (Commencement No 7 and Transitional Provisions) Order 2005, SI 2005/3056, arts 1, 2) is, on and after that date, to be treated for these purposes as if it were designated (Licensing Act 2003 s 173(4)); but provision may by order be made for s 173(4) to cease to have effect in relation to any port, airport or hoverport (s 173(5)). Orders made under, or preserved by, s 173 are of local effect and are not recorded in this work. As to the Secretary of State see PARA 2.

12 'Examination station' has the meaning given by the Customs and Excise Management Act 1979 s 22A (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 937): Licensing Act 2003 s 173(6).

13 As to the meaning of 'premises' see PARA 27 note 12.

14 The reference in head (f) in the text to the armed forces of the Crown includes a reference to members of a visiting force or military members of a headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, Sch 6 (amended for these purposes by SI 2005/3048). The visiting forces to which the 1999 Order applies are those of Antigua and Barbuda, Australia, the Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Canada, the Republic of Cyprus, Dominica, Fiji, the Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Tuvalu, Uganda, Vanuatu, Zambia and Zimbabwe: see the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 3(1) (a), Sch 1 Pt I.

The 1999 Order also applies to the visiting forces of the following countries, where the country in question has been designated by Order in Council under the Visiting Forces Act 1952 for the purposes of giving effect to s 8 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 142) with respect to that country: Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Kazakhstan, Kyrgyzstan, the former Yugoslav Republic of Macedonia, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Turkmenistan, Ukraine, United States of America and Uzbekistan: see the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 3(1) (b), Sch 1 Pt II.

The headquarters to which the 1999 Order applies are the Headquarters of the Supreme Allied Commander Atlantic (SACLANT), the Supreme Headquarters Allied Powers Europe (SHAPE), the Headquarters Allied Forces North Western Europe (AFNORTHWEST), the Headquarters Allied Air Forces North Western Europe (AIRNORTHWEST), the Headquarters Allied Naval Forces North Western Europe (NAVNORTHWEST), the Headquarters Maritime Air Forces North West (MARAIRNORTHWEST), the Headquarters Submarine Forces North West (SUBNORTHWEST), the Headquarters Allied Forces Eastern Atlantic Area (EASTLANT), the Headquarters Maritime Air Forces Eastern Atlantic Area (MARAIREASTLANT), the Headquarters Submarine Forces Eastern Atlantic Area (SUBEASTLANT), the Headquarters United Kingdom-Netherlands Amphibious Force (UKNLAF), the Headquarters United Kingdom-Netherlands Landing Force (UKNLLF) and the NATO Airborne Early Warning Force Headquarters and the NATO E-3A Component: see art 3(2), Sch 2.

15 Ie a certificate issued under the Licensing Act 2003 s 174 (exemption for national security). A Minister of the Crown may issue a certificate under s 174 in respect of any premises, if he considers that it is appropriate

to do so for the purposes of safeguarding national security: s 174(1). Such a certificate may identify the premises in question by means of a general description: s 174(2). A document purporting to be a certificate under s 174 is to be received in evidence and treated as being a certificate under that provision unless the contrary is proved (s 174(3)); and a document which purports to be certified by or on behalf of a Minister of the Crown as a true copy of a certificate given by a Minister of the Crown under s 174 is evidence of that certificate (s 174(4)). A Minister of the Crown may cancel a certificate issued by him, or any other Minister of the Crown, under s 174: s 174(5). The powers so conferred on a Minister of the Crown may be exercised only by a minister who is a member of the Cabinet or by the Attorney General: s 174(6). For these purposes, 'Minister of the Crown' has the meaning given by the Ministers of the Crown Act 1975 (ie the holder of an office in Her Majesty's Government in the United Kingdom, including the Treasury, the Board of Trade (now the Department for Business, Enterprise and Regulatory Reform) and the Defence Council: see s 8(1)): Licensing Act 2003 s 174(7).

16 Licensing Act 2003 s 173(1).

17 ie an incidental non-commercial lottery within the meaning of the Gambling Act 2005 Sch 11 Pt 1 (see PARA 659): Licensing Act 2003 s 175(2) (s 175 substituted by the Gambling Act 2005 Sch 16 Pt 2 para 20(1), (2)).

18 Licensing Act 2003 s 175(1) (as substituted: see note 17).

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

28 Licensable activities

NOTE 14--Bosnia-Herzegovina, Croatia, Ireland, Montenegro, Serbia and Tajikistan have been added to the list in SI 1999/1736 Sch 1 Pt II by SI 2009/705. The headquarters to which SI 1999/1736 now applies are: Headquarters of the Supreme Allied Commander Transformation (HQ SACT), Supreme Headquarters Allied Powers Europe (SHAPE), Maritime Component Command Headquarters Northwood (CC-MAR HQ NORTHWOOD), Commander Submarines Allied Naval Forces North (COMSUBNORTH), NATO Airborne Early Warning and Control Force (NAEW&CF), NATO Joint Electronic Warfare Core Staff (NATO JEWCS), Headquarters United Kingdom--Netherlands Amphibious Force (UKNLAF), Headquarters United Kingdom--Netherlands Landing Force (UKNLLF), The European Air Group (EAG), The Intelligence Fusion Centre (IFC), Headquarters Allied Rapid Reaction Corps (HQ ARRC): Sch 2 (substituted by SI 2009/705). SI 1999/1736 Sch 6 further amended: SI 2009/2054.

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29. Qualifying club activities.

The following licensable activities¹ are also qualifying club activities:

- 138 (1) the supply of alcohol² by or on behalf of a club to, or to the order of, a member of the club³;
- 139 (2) the sale by retail⁴ of alcohol by or on behalf of a club to a guest of a member of the club for consumption on the premises where the sale takes place; and
- 140 (3) the provision of regulated entertainment⁵ where that provision is by or on behalf of a club for members of the club or members of the club and their guests⁶.

1 As to the meaning of 'licensable activities' see PARA 28.

2 As to the meaning of 'supply of alcohol' for these purposes see PARA 53 note 18; and as to the meaning of 'alcohol' see PARA 30.

3 For the purposes of the Licensing Act 2003, references to the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club do not include a reference to any supply which is a sale by retail of alcohol: s 1(3).

4 As to the meaning of 'sale by retail' see PARA 30.

5 The Licensing Act 2003 Sch 1 makes provision about what constitutes the provision of regulated entertainment for the purposes of the 2003 Act: s 1(4). See PARA 31.

6 Licensing Act 2003 s 1(2). See further PARA 85 et seq.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(1) THE LICENSING ACT 2003; IN GENERAL/(i) Introduction/30. Meanings of 'alcohol' and 'sale by retail'; location of sales of alcohol.

30. Meanings of 'alcohol' and 'sale by retail'; location of sales of alcohol.

In the Licensing Act 2003¹, 'alcohol' means spirits, wine², beer³, cider⁴ or any other fermented, distilled or spirituous liquor, but does not include:

- 141 (1) alcohol which is of a strength⁵ not exceeding 0.5% at the time of the sale or supply in question;
- 142 (2) perfume;
- 143 (3) flavouring essences recognised by the Commissioners for Revenue and Customs as not being intended for consumption as or with dutiable alcoholic liquor⁶;
- 144 (4) the aromatic flavouring essence commonly known as Angostura bitters;
- 145 (5) alcohol which is, or is included in, a medicinal product⁷ or a veterinary medicinal product⁸;
- 146 (6) denatured alcohol⁹;
- 147 (7) methyl alcohol;
- 148 (8) naphtha; or
- 149 (9) alcohol contained in liqueur confectionery¹⁰.

For the purposes of the 2003 Act 'sale by retail', in relation to any alcohol, means a sale of alcohol to any person, other than a sale of alcohol that is:

- 150 (a) within heads (i) to (v) below, namely a sale which is:
 - 7 8. (i) to a trader for the purposes of his trade;
 - 9. (ii) to a club, which holds a club premises certificate¹¹, for the purposes of that club;
 - 10. (iii) to the holder of a personal licence¹² for the purpose of making sales authorised by a premises licence¹³;
 - 11. (iv) to the holder of a premises licence for the purpose of making sales authorised by that licence; or
 - 12. (v) to the premises user in relation to a temporary event notice¹⁴ for the purpose of making sales authorised by that notice;
- 8 151 (b) made from premises owned by the person making the sale, or occupied by him under a lease to which the provisions of Part II of the Landlord and Tenant Act 1954 relating to security of tenure¹⁵ apply; and
- 152 (c) made for consumption off the premises¹⁶.

Where the place where a contract for the sale of alcohol is made is different from the place where the alcohol is appropriated to the contract, then the sale of alcohol is to be treated for the statutory purposes as taking place where the alcohol is appropriated to the contract¹⁷.

1 As to the commencement of the Licensing Act 2003 and for transitional provisions see PARA 26.

- 2 For these purposes, 'wine' means 'wine' and 'made-wine' within the meanings of the Alcoholic Liquor Duties Act 1979 (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARAS 402-403): Licensing Act 2003 s 193.
- 3 For these purposes, 'beer' has the same meaning as in the Alcoholic Liquor Duties Act 1979 (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 401): Licensing Act 2003 s 193.
- 4 For these purposes, 'cider' has the same meaning as in the Alcoholic Liquor Duties Act 1979 (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 404): Licensing Act 2003 s 193.
- 5 For these purposes, 'strength' is to be construed in accordance with the Alcoholic Liquor Duties Act 1979 s 2 (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 408): Licensing Act 2003 s 191(2).
- 6 For these purposes, 'dutable alcoholic liquor' has the same meaning as in the Alcoholic Liquor Duties Act 1979 (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 399): Licensing Act 2003 s 191(2).
- 7 For these purposes, 'medicinal product' has the same meaning as in the Medicines Act 1968 s 130 (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 7): Licensing Act 2003 s 191(2).
- 8 For these purposes, 'veterinary medicinal product' has the same meaning as in the Veterinary Medicines Regulations 2007, SI 2007/2539, reg 2 (see **MEDICINAL PRODUCTS AND DRUGS**): Licensing Act 2003 s 191(2); Interpretation Act 1979 s 17(2).
- 9 For these purposes, 'denatured alcohol' has the same meaning as in the Finance Act 1995 s 5 (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 507): Licensing Act 2003 s 191(2).
- 10 Licensing Act 2003 s 191(1). 'Liqueur confectionery' means confectionery which (1) contains alcohol in a proportion not greater than 0.2 litres of alcohol (of a strength not exceeding 57%) per kg of the confectionery; and (2) either consists of separate pieces weighing not more than 42g or is designed to be broken into such pieces for the purpose of consumption: s 191(2).
- 11 As to the meaning of 'club premises certificate' see PARA 85.
- 12 As to the meaning of 'personal licence' see PARA 114.
- 13 As to the meaning of 'premises licence' see PARA 53.
- 14 As to the meaning of 'temporary event notice' see PARA 108.
- 15 In the Landlord and Tenant Act 1954 Pt II (ss 23-46): see **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 701 et seq.
- 16 Licensing Act 2003 s 192(1), (2).
- 17 Licensing Act 2003 s 190(1), (2).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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31. The provision of regulated entertainment.

For the purposes of the Licensing Act 2003¹, the 'provision of regulated entertainment' means the provision of entertainment of a description set out in heads (a) to (h) below², or entertainment facilities for enabling persons to take part in entertainment of a description falling within heads (i) to (iii)³ below for the purpose, or for purposes which include the purpose, of being entertained⁴, where the following conditions are satisfied⁵. The first condition is that the entertainment is, or entertainment facilities are, provided:

- 153 (1) to any extent for members of the public or a section of the public⁶;
- 154 (2) exclusively for members of a club which is a qualifying club⁷ in relation to the provision of regulated entertainment, or for members of such a club and their guests⁸; or
- 155 (3) in any case not falling within head (1) or head (2) above, for consideration and with a view to profit⁹.

The second condition is that the premises¹⁰ on which the entertainment is, or entertainment facilities are, provided are made available for the purpose, or for purposes which include the purpose, of enabling the entertainment concerned¹¹ to take place; and to the extent that the provision of entertainment facilities consists of making premises available, the premises are to be regarded for these purposes as premises on which entertainment facilities are provided¹².

The descriptions of entertainment are:

- 156 (a) a performance of a play¹³;
- 157 (b) an exhibition of a film¹⁴;
- 158 (c) an indoor sporting event¹⁵;
- 159 (d) a boxing or wrestling entertainment¹⁶;
- 160 (e) a performance of live music;
- 161 (f) any playing of recorded music;
- 162 (g) a performance of dance;
- 163 (h) entertainment of a similar description¹⁷ to that falling within head (e), head (f) or head (g) above,

where the entertainment takes place in the presence of an audience¹⁸ and is provided for the purpose, or for purposes which include the purpose, of entertaining that audience¹⁹.

With regard to the provision of entertainment facilities, the descriptions of entertainment are:

- 164 (i) making music;
- 165 (ii) dancing;
- 166 (iii) entertainment of a similar description to that falling within head (i) or head (ii) above²⁰.

The above provisions are subject to the following exemptions²¹:

- 167 (A) the provision of entertainment consisting of the exhibition of a film is not to be regarded as the provision of regulated entertainment for the statutory purposes if its sole or main purpose is to demonstrate any product, advertise any goods or services, or provide information, education or instruction²²;
- 168 (B) the provision of entertainment consisting of the exhibition of a film is not to be regarded as the provision of regulated entertainment for the statutory purposes if it consists of or forms part of an exhibit put on show for any purposes of a museum or art gallery²³;
- 169 (C) the provision of entertainment consisting of the performance of live music or the playing of recorded music is not to be regarded as the provision of regulated entertainment for the statutory purposes to the extent that it is incidental to some other activity which is not itself either a description of entertainment falling within heads (a) to (h) above or the provision of entertainment facilities²⁴;
- 170 (D) the provision of any entertainment or entertainment facilities is not to be regarded as the provision of regulated entertainment for the statutory purposes to the extent that it consists of the simultaneous reception and playing of a programme included in a programme service within the meaning of the Broadcasting Act 1990²⁵;
- 171 (E) the provision of any entertainment or entertainment facilities for the purposes of, or for purposes incidental to, a religious meeting or service, or at a place of public religious worship, is not to be regarded as the provision of regulated entertainment for the statutory purposes²⁶;
- 172 (F) the provision of any entertainment or entertainment facilities at a garden fête, or at a function or event of a similar character, is not to be regarded as the provision of regulated entertainment for the statutory purposes²⁷; but this does not apply if the fête, function or event is promoted with a view to applying the whole or part of its proceeds for purposes of private gain²⁸;
- 173 (G) the provision of any entertainment or entertainment facilities is not to be regarded as the provision of regulated entertainment for the statutory purposes to the extent that it consists of the provision of a performance of morris dancing or any dancing of a similar nature or a performance of unamplified, live music as an integral part of such a performance, or facilities for enabling persons to take part in entertainment of such a description²⁹;
- 174 (H) the provision of any entertainment or entertainment facilities on premises consisting of or forming part of a vehicle, and at a time when the vehicle is not permanently or temporarily parked, is not to be regarded as the provision of regulated entertainment for the statutory purposes³⁰.

The Secretary of State has issued guidance³¹ to which licensing authorities³² and magistrates upon appeal are bound to have regard³³, as to the practical considerations raised by the above provisions³⁴. It has also been stated that poetry readings and performances by stand-up comedians which do not involve music are not regulated entertainments³⁵.

1 As to the commencement of the Licensing Act 2003 and for transitional provisions see PARA 26.

2 I.e. entertainment of a description falling within the Licensing Act 2003 Sch 1 para 2.

3 I.e. entertainment facilities falling within the Licensing Act 2003 Sch 1 para 3.

4 See the Licensing Act 2003 Sch 1 para 3(1).

5 Licensing Act 2003 Sch 1 para 1(1).

6 It has been held under previous legislation that for an entertainment to be public, it must be one to which all persons have a right to go, whether gratuitously (*Archer v Willingrice* (1802) 4 Esp 186), or upon payment of money, no matter whether paid to the defendant or not, if he knows of the payment. Whether the dancing is

really 'public' is a question of fact (*Maloney v Lingard* (1898) 42 Sol Jo 193). A room kept by a dancing master, where persons met for the purpose of dancing, but to which no persons were admitted but subscribers, or persons introduced by them, or by the defendant as their and his friends, and to which persons were not indiscriminately admitted, was held not to be 'public' (*Bellis v Burghall* (1799) 2 Esp 722). The fact that no charge is made for admittance is immaterial (*Archer v Willingrice*; *Gregory v Tuffs* (1833) 6 C & P 271; *Frailing v Messenger* (1867) 31 JP 423), but the taking of money for admission would be evidence of ownership (*Archer v Willingrice* per Lord Ellenborough). The test of whether premises are open to the public is not whether one or two or any particular number of members of the public are present, but whether on the evidence, any reputable member of the public, on paying for admission, could come in: see *Gardner v Morris* (1961) 59 LGR 187. In *Panama (Piccadilly) Ltd v Newberry* [1962] 1 All ER 769, [1962] 1 WLR 610, a candidate for membership of a club where an entertainment took place did not cease to be a member of the public simply by paying an entrance fee for membership of the club and filling in a form. Whether an elected member of this particular club would cease to be a member of the public was doubted by Parker LCJ, but left undecided. See also *Casino de Paris Ltd v Newberry* [1962] 1 All ER 771n, [1960] Crim LR 836; *Severn View Social Club and Institute Ltd v Chepstow Licensing Justices* [1968] 3 All ER 289, [1968] 1 WLR 1512.

7 As to the meaning of 'qualifying club' see the Licensing Act 2003 s 61; and PARA 86.

8 As to the meaning of 'guest' see PARA 86 note 4.

9 Licensing Act 2003 Sch 1 para 1(2). For the purposes of Sch 1 para 1(2)(c) (see head (3) in the text), entertainment is, or entertainment facilities are, to be regarded as provided for consideration only if any charge (1) is made by or on behalf of: (a) any person concerned in the organisation or management of that entertainment; or (b) any person concerned in the organisation or management of those facilities who is also concerned in the organisation or management of the entertainment within Sch 1 para 3(2) (see heads (i)-(iii) in the text) in which those facilities enable persons to take part; and (2) is paid by or on behalf of some or all of the persons for whom that entertainment is, or those facilities are, provided (Sch 1 para 1(4)); and 'charge' includes any charge for the provision of goods or services (Sch 1 para 1(5)). For the purposes of head (1) above, where the entertainment consists of the performance of live music or the playing of recorded music, a person performing or playing the music is not concerned in the organisation or management of the entertainment by reason only that he does one or more of the following: (i) chooses the music to be performed or played; (ii) determines the manner in which he performs or plays it; (iii) provides any facilities for the purposes of his performance or playing of the music: Sch 1 para 1(6).

'Music' includes vocal or instrumental music or any combination of the two: Sch 1 para 18.

10 As to the meaning of 'premises' see PARA 27 note 12.

11 As to whether of a description falling within the Licensing Act 2003 Sch 1 para 2(1) (see heads (a)-(h) in the text) or Sch 1 para 3(2) (see heads (i)-(iii) in the text).

12 Licensing Act 2003 Sch 1 para 1(3).

13 A 'performance of a play' means a performance of any dramatic piece, whether involving improvisation or not (1) which is given wholly or in part by one or more persons actually present and performing; and (2) in which the whole or a major proportion of what is done by the person or persons performing, whether by way of speech, singing or action, involves the playing of a role: Licensing Act 2003 Sch 1 para 14(1). 'Performance' includes rehearsal and 'performing' is to be construed accordingly: Sch 1 para 14(2).

14 An 'exhibition of a film' means any exhibition of moving pictures: Licensing Act 2003 Sch 1 para 15.

15 An 'indoor sporting event' is a sporting event which takes place wholly inside a building, and at which the spectators present at the event are accommodated wholly inside that building: Licensing Act 2003 Sch 1 para 16(1). For these purposes: (1) 'building' means any roofed structure (other than a structure with a roof which may be opened or closed) and includes a vehicle, vessel or movable structure; (2) 'sporting event' means any contest, exhibition or display of any sport; and (3) 'sport' includes (a) any game in which physical skill is the predominant factor; and (b) any form of physical recreation which is also engaged in for purposes of competition or display: Sch 1 para 16(2). As to the meanings of 'vehicle' and 'vessel' see PARA 27 notes 14, 11 respectively.

16 A 'boxing or wrestling entertainment' is any contest, exhibition or display of boxing or wrestling: Licensing Act 2003 Sch 1 para 17.

17 See *Willowcell Ltd v Westminster City Council* (1995) 94 LGR 83, 160 JP 101, CA, where it was held under previous legislation to be a question of fact and degree whether premises were being used for 'public entertainment of a like kind'.

18 For these purposes, any reference to an audience includes a reference to spectators: Licensing Act 2003 Sch 1 para 2(2).

19 Licensing Act 2003 Sch 1 para 2(1). The Secretary of State may by order amend Sch 1 for the purpose of modifying the descriptions of entertainment specified in Sch 1 para 2 (Sch 1 para 4(a)); and for this purpose 'modify' includes adding, varying or removing any description: Sch 1 para 4. At the date at which this volume states the law, no such order had been made. As to the Secretary of State see PARA 2.

20 Licensing Act 2003 Sch 1 para 3(2). The Secretary of State may by order amend Sch 1 for the purpose of modifying the descriptions of entertainment specified in Sch 1 para 3: Sch 1 para 4(b). At the date at which this volume states the law, no such order had been made. As to the meaning of 'modify' see note 19.

21 Licensing Act 2003 Sch 1 para 1(7).

22 Licensing Act 2003 Sch 1 para 5.

23 Licensing Act 2003 Sch 1 para 6.

24 Licensing Act 2003 Sch 1 para 7. As to the meaning of 'incidental' music see HC Official Report, SC D (Licensing Bill), 1 April 2003, cols 67-68; and *Revised Guidance issued under section 182 of the Licensing Act 2003* (28 June 2007, Department for Culture, Media and Sport) paras 3.20-3.23.

25 Licensing Act 2003 Sch 1 para 8. As to the meaning of 'programme service' see the Broadcasting Act 1990 s 201; and **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 328.

26 Licensing Act 2003 Sch 1 para 9. The entertainment in question may be of a secular nature: see 645 HL Official Report (5th series), 24 February 2003, col 37.

27 Licensing Act 2003 Sch 1 para 10(1).

28 Licensing Act 2003 Sch 1 para 10(2). For these purposes, 'private gain', in relation to the proceeds of a fête, function or event, is to be construed in accordance with the Gambling Act 2005 s 19(3) (see PARA 377 note 2): Licensing Act 2003 Sch 1 para 10(3) (amended by the Gambling Act 2005 Sch 16 para 20(1), (3)).

29 Licensing Act 2003 Sch 1 para 11.

30 Licensing Act 2003 Sch 1 para 12.

31 See under the Licensing Act 2003 s 182: see PARA 2. As to the status of such guidance see 642 HL Official Report (5th series), 17 December 2002, col 629.

32 As to the licensing authorities see PARA 3.

33 See the Licensing Act 2003 s 4(3)(b); and PARA 35.

34 See *Revised Guidance issued under section 182 of the Licensing Act 2003* (28 June 2007, Department for Culture, Media and Sport) paras 3.8-3.31. That guidance is published on the department's website, accessible at the date at which this volume states the law at www.culture.gov.uk.

35 See HC Official Report, SC D (Licensing Bill), 1 April 2003, col 62.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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32. The provision of late night refreshment.

For the purposes of Licensing Act 2003¹, a person 'provides late night refreshment' if:

- 175 (1) at any time between the hours of 11.00 pm and 5.00 am, he supplies hot food or hot drink² to members of the public³, or a section of the public, on or from any premises⁴, whether for consumption on or off the premises; or
- 176 (2) at any time between those hours when members of the public, or a section of the public, are admitted to any premises, he supplies, or holds himself out as willing to supply, hot food or hot drink to any persons, or to persons of a particular description, on or from those premises, whether for consumption on or off the premises,

unless the supply is an exempt supply by virtue of head (a), head (b) or head (c) below⁵.

The following exemptions apply⁶:

- 177 (a) the supply of hot food or hot drink on or from any premises at any time is an exempt supply if, at that time, a person will neither be admitted to the premises, nor be supplied with hot food or hot drink on or from the premises, except by virtue of being a person of a description falling within heads (i) to (v) below, namely that:
- 9
13. (i) he is a member of a recognised club;
14. (ii) he is a person staying at a particular hotel, or at particular comparable premises⁷, for the night in question;
15. (iii) he is an employee of a particular employer;
16. (iv) he is engaged in a particular trade, he is a member of a particular profession or he follows a particular vocation;
17. (v) he is a guest of a person falling within any of heads (i) to (iv) above⁸;
- 10
- 178 (b) the supply of hot food or hot drink on or from any premises is an exempt supply if it takes place during a period for which the premises may be used for a public exhibition⁹ or as near beer premises¹⁰ under certain legislation relating to London¹¹;
- 179 (c) the following supplies of hot food or hot drink are exempt supplies:
- 11
18. (i) the supply of hot drink which consists of or contains alcohol¹²;
19. (ii) the supply of hot drink by means of a vending machine¹³;
20. (iii) the supply of hot food or hot drink free of charge¹⁴;
21. (iv) the supply of hot food or hot drink by a registered charity¹⁵ or a person authorised by a registered charity;
22. (v) the supply of hot food or hot drink on a vehicle¹⁶ at a time when the vehicle is not permanently or temporarily parked¹⁷.
- 12

1 As to the commencement of the Licensing Act 2003 and for transitional provisions see PARA 26.

2 Food or drink supplied on or from any premises is 'hot' for these purposes if the food or drink, or any part of it (1) before it is supplied, is heated on the premises or elsewhere for the purpose of enabling it to be consumed at a temperature above the ambient air temperature and, at the time of supply, is above that temperature; or (2) after it is supplied, may be heated on the premises for the purpose of enabling it to be consumed at a temperature above the ambient air temperature: Licensing Act 2003 Sch 2 para 2.

3 For these purposes: (1) the supply of hot food or hot drink to a person as being a member, or the guest of a member, of a club which is not a recognised club is to be taken to be a supply to a member of the public; and (2) the admission of any person to any premises as being such a member or guest is to be taken to be the admission of a member of the public: Licensing Act 2003 Sch 2 para 6. 'Recognised club' means a club which satisfies conditions 1-3 of the general conditions in s 62 (see PARA 86): s 193. As to the meaning of 'guest' see PARA 86.

4 As to the meaning of 'premises' see PARA 27 note 12.

5 Licensing Act 2003 Sch 2 para 1(1). References in the Licensing Act 2003 to the 'provision of late night refreshment' are to be construed in accordance with Sch 2 para 1(1): Sch 2 para 1(2).

6 See Sch 2 para 1(3).

7 The premises which are comparable to a hotel for these purposes are (1) a guest house, lodging house or hostel; (2) a caravan site or camping site; or (3) any other premises the main purpose of maintaining which is the provision of facilities for overnight accommodation: Licensing Act 2003 Sch 2 para 3(3).

8 Licensing Act 2003 Sch 2 para 3(1), (2).

9 I.e a public exhibition of a kind described in the Greater London Council (General Powers) Act 1966 s 21(1) by virtue of a licence under s 21.

10 I.e near beer premises within the meaning of the London Local Authorities Act 1995 s 14 by virtue of a licence under s 16. Sections 14, 16 are repealed by the London Local Authorities Act 2007 s 35, with effect from different dates in relation to different London boroughs: see ss 1(3), (4), 3, 33(1).

11 Licensing Act 2003 Sch 2 para 4.

12 As to the meaning of 'alcohol' see PARA 30. A premises licence, a club premises certificate or a temporary event notice is, however, required for the sale of alcoholic drinks: see PARA 53 et seq.

13 Hot drink is supplied by means of a vending machine for these purposes only if: (1) the payment for the hot drink is inserted into the machine by a member of the public; and (2) the hot drink is supplied directly by the machine to a member of the public: Licensing Act 2003 Sch 2 para 5(2).

14 Hot food or hot drink is not to be regarded as supplied free of charge for these purposes if, in order to obtain the hot food or hot drink, a charge must be paid for admission to any premises, or for some other item: Licensing Act 2003 Sch 2 para 5(3).

15 For these purposes, 'registered charity' means (1) at the date at which this volume states the law, a charity which is registered under the Charities Act 1993 s 3 or which by virtue of s 3(5) is not required to be so registered; (2) as from a day to be appointed under the Charities Act 2006 s 79(2), a charity which is registered in accordance with the Charities Act 1993 s 3A or which by virtue of s 3A(2) is not required to be so registered: Licensing Act 2003 Sch 2 para 5(4) (prospectively amended by the Charities Act 2006 Sch 8 para 199; at the date at which this volume states the law, that amendment was not in force).

16 As to the meaning of 'vehicle' see PARA 27 note 14.

17 Licensing Act 2003 Sch 2 para 5(1).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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33. Authorisation for licensable activities and qualifying club activities.

A licensable activity¹ may be carried on: (1) under and in accordance with a premises licence²; or (2) in circumstances where the activity is a permitted temporary activity³. A qualifying club activity⁴ may be carried on under and in accordance with a club premises certificate⁵.

Nothing in the Licensing Act 2003 prevents two or more authorisations⁶ having effect concurrently in respect of the whole or a part of the same premises⁷ or in respect of the same person⁸.

1 As to licensable activities see PARA 28.

2 le carried on in accordance with the Licensing Act 2003 Pt 3 (ss 11-59) (premises licences): see PARA 53 et seq.

3 Licensing Act 2003 s 2(1). The reference in the text is a reference to a permitted temporary activity by virtue of Pt 5 (ss 98-110): see PARA 108 et seq.

4 As to qualifying club activities see PARA 29.

5 Licensing Act 2003 s 2(2). As to club premises certificates see Pt 4 (ss 60-97); and PARA 85 et seq.

6 For these purposes, 'authorisation' means a premises licence, a club premises certificate, and a temporary event notice: Licensing Act 2003 s 2(4). As to temporary event notices see PARA 108 et seq.

7 As to the meaning of 'premises' see PARA 27 note 12.

8 Licensing Act 2003 s 2(3).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(1) THE LICENSING ACT 2003; IN GENERAL/(i) Introduction/34. Right of entry to investigate licensable activities.

34. Right of entry to investigate licensable activities.

Where a constable¹ or an authorised person² has reason to believe that any premises³ are being, or are about to be, used for a licensable activity⁴, he may enter the premises with a view to seeing whether the activity is being, or is to be, carried on under and in accordance with an authorisation⁵.

An authorised person exercising the power thus conferred⁶ must, if so requested, produce evidence of his authority to exercise the power⁷. A person exercising such power may, if necessary, use reasonable force⁸.

A person commits an offence if he intentionally obstructs an authorised person exercising such a power⁹. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale¹⁰.

Nothing in the above provisions¹¹ applies in relation to premises in respect of which there is a club premises certificate but no other authorisation¹².

1 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

2 'Authorised person' means an authorised person within the meaning of the Licensing Act 2003 Pt 3 (see ss 11-59) (see PARA 54 note 2) or Pt 4 (ss 60-97) (see PARA 89 note 5) or an authorised officer within the meaning of s 108(5) (see PARA 111): s 179(6).

3 As to the meaning of 'premises' see PARA 27 note 12.

4 As to licensable activities see PARA 28.

5 Licensing Act 2003 s 179(1). 'Authorisation' means a premises licence, a club premises certificate, or a temporary event notice in respect of which the conditions of s 98(2)-(4) (see PARA 108) are satisfied: s 179(6). As to premises licences see PARA 53 et seq; and as to club premises certificates see PARA 85 et seq.

6 Ie conferred by the Licensing Act 2003 s 179.

7 Licensing Act 2003 s 179(2).

8 Licensing Act 2003 s 179(3).

9 Licensing Act 2003 s 179(4).

10 Licensing Act 2003 s 179(5). As to the standard scale see PARA 17 note 21.

11 Ie the Licensing Act 2003 s 179.

12 Licensing Act 2003 s 179(7).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(1) THE LICENSING ACT 2003; IN GENERAL/(ii) Licensing Authorities/A. GENERAL FUNCTIONS AND DUTIES OF LICENSING AUTHORITIES/35. General duties of licensing authorities.

(ii) Licensing Authorities

A. GENERAL FUNCTIONS AND DUTIES OF LICENSING AUTHORITIES

35. General duties of licensing authorities.

A licensing authority under the Licensing Act 2003¹ must carry out its functions² with a view to promoting the licensing objectives, namely the prevention of crime and disorder³, public safety, the prevention of public nuisance⁴, and the protection of children from harm⁵.

An authority must also have regard to its statement of licensing policy⁶ and any guidance issued⁷ by the Secretary of State⁸.

¹ As to the licensing authorities see PARA 3.

² As to the delegation of functions to licensing committees see PARAS 40-42. See also the Gambling Act 2005 s 154; and PARAS 466-468.

³ This objective is referred to elsewhere in the Licensing Act 2003 as the 'crime prevention objective': see s 193; and see eg s 18(9); and PARA 55; s 37(5); and PARA 69. Crime and disorder away from the venue in question and not under the direct control of the licensee may be taken into account: see *Brook Leisure Ltd v Luminar Leisure Ltd* [2008] EWHC 1002 (Admin), 172 JP 345, [2008] All ER (D) 272 (Apr).

⁴ There is no statutory definition of 'public nuisance' for these purposes and the term has been stated to carry its common law meaning: see 642 HL Official Report (5th series), 17 December 2002, col 560. See further **NUISANCE** vol 78 (2010) PARA 105 et seq.

⁵ See the Licensing Act 2003 s 4(1), (2).

Licensing authorities, in pursuing the licensing objectives, may have to have regard to locational factors, especially where exceptional circumstances have justified the adoption by the licensing authority of a 'cumulative effect' policy of restriction on licences, but also where the express grant of planning permission is not required for a licensable activity because, for example, there is a change of use of the premises and the existing and the proposed uses are within the same use class. Whilst it is relatively easy to state as an objective that the statement of licensing policy should indicate that 'planning, building control and licensing regimes will be properly separated to avoid duplication and inefficiency', it is much harder to formulate any general principle that would assist in demarcating the respective competences of planning and licensing authorities. Nevertheless, the framework and substance of the Licensing Act 2003, and its underlying rationale, strongly suggest that operational matters are intended primarily for regulation by the licensing authorities. Therefore, once planning permission has been granted for licensed premises, an operational matter, such as opening hours, is intended by the Act to be regulated primarily by the licensing authority. Each case has to be considered upon its own particular facts: the planning authority may, in appropriate circumstances, impose conditions on granting planning permission for licensed premises that concern operational matters. But in many circumstances the planning authority can properly leave such matters to be regulated by the licensing authority. If the planning authority has not dealt with an operational matter, such as opening hours, the licensing authority has the primary task of determining what conditions should be imposed; but it is not for the licensing authority to examine whether a proposed variation in a licence requires planning consent or to speculate whether, if it does, such consent will be forthcoming, that being a planning matter falling exclusively within the competence of the planning authority: see *R (on the application of Blackwood) v Birmingham Magistrates and Birmingham City Council (Mitchells and Butler Leisure Retail Ltd interested party)* [2006] EWHC 1800 (Admin), (2006) 170 JP 613, [2006] All ER (D) 324 (Jun). For a case concerning a similar issue, determined prior to the Licensing Act 2003 (its prospective implementation being a factor in the court's decision) see *Lethem v Secretary of State for Local Government and the Regions* [2002] EWHC 1549 (Admin), [2003] JPL 332, [2002] All ER (D) 90 (Jul).

6 le the licensing statement published under the Licensing Act 2003: see PARA 36.

7 le under the Licensing Act 2003 s 182: see PARA 2. As to the status of that guidance see 642 HL Official Report (5th series), 17 December 2002, col 629.

8 Licensing Act 2003 s 4(3). Save where the guidance states how conflicts and tensions are to be resolved, how that is to be done is a matter for the local licensing authority, which may seek to do so in its statement of policy or when it determines a particular licensing application: *R (on the application of JD Wetherspoon plc) v Guildford Borough Council* [2006] EWHC 815 (Admin), [2007] 1 All ER 400, [2006] LGR 767. An authority is entitled to have a 'cumulative impact policy' that new applications in an area will normally be refused, provided it is prepared to consider that an exception to the policy ought to be made in a given case: *R (on the application of JD Wetherspoon plc) v Guildford Borough Council*.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

35 General duties of licensing authorities

NOTE 3--The licensing objectives created by the Licensing Act 2003 s 4 are the prevention of crime and/or the prevention of disorder: *Blackpool BC v Howitt* [2008] EWHC 3300 (Admin), [2009] 4 All ER 154.

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36. Statements of licensing policy.

In respect of each three year period¹, each licensing authority² must determine its policy with respect to the exercise of its licensing functions³, and publish a statement of that policy (a 'licensing statement') before the beginning of the period⁴. Before determining its policy for a three year period, a licensing authority must consult:

- 180 (1) the chief officer of police for the licensing authority's area;
- 181 (2) the fire and rescue authority for that area;
- 182 (3) such persons as the licensing authority considers to be representative of holders of premises licences⁵ issued by that authority⁶;
- 183 (4) such persons as the licensing authority considers to be representative of holders of club premises certificates⁷ issued by that authority⁸;
- 184 (5) such persons as the licensing authority considers to be representative of holders of personal licences⁹ issued by that authority¹⁰; and
- 185 (6) such other persons as the licensing authority considers to be representative of businesses and residents in its area¹¹.

During each three year period, a licensing authority must keep its policy under review and make such revisions to it, at such times, as it considers appropriate¹². The consultation requirements set out in heads (1) to (6) above apply in relation to any revision of an authority's policy as they apply in relation to the original determination of that policy¹³. Where revisions are made, the licensing authority must publish a statement of the revisions or the revised licensing statement¹⁴.

Regulations may make provision about the determination and revision of policies, and the preparation and publication of licensing statements, under the above provisions¹⁵.

1 For these purposes, 'three year period' means (1) the period of three years beginning with such day as the Secretary of State may by order appoint; and (2) each subsequent period of three years: Licensing Act 2003 s 5(2). The day appointed under head (1) above was 7 January 2005: see the Licensing Act 2003 (Licensing Statement Period) Order 2004, SI 2004/2362, art 2. As to the Secretary of State see PARA 2.

2 As to the licensing authorities see PARA 3.

3 As to the delegation of functions to licensing committees see PARAS 40-42. See also the Gambling Act 2005 s 154; and PARAS 466-468.

4 Licensing Act 2003 s 5(1). A statement of policy may not purport to prescribe the contents of an application for a premises licence or convey the impression that the council will assess, and exercise substantive discretionary powers in relation to, all applications and not just those that come through for a decision under s 18(3) following the lodging of relevant representations (see PARA 55), and will be unlawful to that extent: *R (on the application of the British Beer and Pub Association) v Canterbury City Council* [2005] EWHC 1318 (Admin), [2006] LGR 596, sub nom *British Beer and Pub Association, Association of Licensed Multiple Retailers and British Institute of Innkeeping v Canterbury City Council* (2005) 169 JP 521.

5 As to premises licences see PARA 53 et seq.

6 In the first three year period, a licensing authority was obliged to consult such persons as it considered to be representative of holders of existing licences (within the meaning of Sch 8 Pt 1) in respect of premises situated in the authority's area: see s 5(3)(c) (substituted for transitional purposes by Sch 8 Pt 4 para 29).

7 As to club premises certificates see PARA 85 et seq.

8 In the first three year period, a licensing authority was obliged to consult such persons as it considered representative of clubs registered (within the meaning of the Licensing Act 1964 (repealed)) in respect of any premises situated in the authority's area: see s 5(3)(d) (substituted for transitional purposes by the Licensing Act 2003 Sch 8 Pt 4 para 29).

9 As to personal licences see PARA 114 et seq.

10 See note 6.

11 Licensing Act 2003 s 5(3).

12 Licensing Act 2003 s 5(4).

13 Licensing Act 2003 s 5(5).

14 Licensing Act 2003 s 5(6).

15 Licensing Act 2003 s 5(7). At the date at which this volume states the law, no such regulations had been made.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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37. Requirement to keep a register.

Each licensing authority¹ must keep a register containing:

- 186 (1) a record of each premises licence², club premises certificate³ and personal licence⁴ issued by it;
- 187 (2) a record of each temporary event notice⁵ received by it;
- 188 (3) the specified matters⁶; and
- 189 (4) such other information as may be prescribed⁷.

Regulations may require a register so kept to be in a prescribed form and kept in a prescribed manner⁸.

Each licensing authority must provide facilities for making the information contained in the entries in its register available for inspection (in a legible form) by any person during office hours and without payment⁹. If requested to do so by any person, a licensing authority must supply him with a copy of the information contained in any entry in its register in legible form¹⁰; and it may charge such reasonable fee as it may determine in respect of any copy so supplied¹¹.

The Secretary of State¹² may arrange for the above duties conferred¹³ on licensing authorities to be discharged by means of one or more central registers kept by a person appointed pursuant to the arrangements¹⁴. He may require licensing authorities to participate in and contribute towards the cost of any arrangements so made¹⁵.

1 As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35, 38-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

2 As to premises licences see PARA 53 et seq.

3 As to club premises certificates see PARA 85 et seq.

4 As to personal licences see PARA 114 et seq.

5 As to temporary event notices see PARA 108 et seq.

6 The matters specified by the Licensing Act 2003 s 8, Sch 3: see PARA 38.

7 Licensing Act 2003 s 8(1). 'Prescribed' means prescribed by regulations: s 193. As to the prescribed information see PARA 38.

See also the Gambling Act 2005 s 156; and PARA 469.

8 Licensing Act 2003 s 8(2). At the date at which this volume states the law, no such regulations had been made.

9 Licensing Act 2003 s 8(3).

10 Licensing Act 2003 s 8(4).

- 11 Licensing Act 2003 s 8(5).
- 12 As to the Secretary of State see PARA 2.
- 13 le conferred by the Licensing Act 2003 s 8.
- 14 Licensing Act 2003 s 8(6).
- 15 Licensing Act 2003 s 8(7).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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38. Contents of the register.

The licensing register kept by a licensing authority¹ must contain a record of the following matters:

- 190 (1) any application made to the licensing authority for the grant of a premises licence² or a club premises certificate³ or for the grant or renewal of a personal licence⁴;
- 191 (2) any application made to it for a copy of a premises licence or summary⁵, or of a club premises certificate or summary⁶, or of a temporary event notice⁷, or of a personal licence⁸, where the original has been lost, stolen, damaged or destroyed⁹;
- 192 (3) any notice given to it¹⁰ where the holder of a premises licence, a club premises certificate or a personal licence wishes to surrender it¹¹;
- 193 (4) any application made to it¹² for a provisional statement in respect of premises¹³;
- 194 (5) any notice given to it¹⁴ of a change of name or address of the holder of a premises licence, a club premises certificate or a personal licence¹⁵;
- 195 (6) any application made to it¹⁶ for the variation of a premises licence or a club premises certificate¹⁷;
- 196 (7) any application made to it¹⁸ for the variation of a premises licence to specify an individual as the premises supervisor¹⁹;
- 197 (8) any notice given to it²⁰ by a designated premises supervisor requesting his removal from a premises licence²¹;
- 198 (9) any application made to it²² for the transfer of a premises licence²³;
- 199 (10) any interim authority notice given²⁴ to it²⁵;
- 200 (11) any application made to it²⁶ for a review of a premises licence or a club premises certificate²⁷;
- 201 (12) any notice given to it²⁸ of the withdrawal of a temporary event notice²⁹;
- 202 (13) any counter-notice given by it³⁰ following police objection to a temporary event notice³¹;
- 203 (14) any copy of a temporary event notice given to it³² following the making of modifications to a temporary event notice with police consent³³;
- 204 (15) any notice given to it³⁴ by a magistrates' court of any determination made after a closure order³⁵;
- 205 (16) any application³⁶ for the conversion of an old licence into a premises licence³⁷;
- 206 (17) any application³⁸ for the conversion of a club certificate into a club premises certificate³⁹.

1 le the register kept under the Licensing Act 2003 s 8: see PARA 37. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-37; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

2 le any application under the Licensing Act 2003 s 17 (see PARA 53): Sch 3 para (a). As to premises licences see PARA 53 et seq. The register must also contain a record of the accompanying operating schedule (provided that the name and address of the premises supervisor, if any, must be removed from the schedule before it is

recorded) and plan of the premises to which the application relates: Licensing Act 2003 (Licensing authority's register) (other information) Regulations 2005, SI 2005/43, reg 2(1), (2)(a).

3 Ie any application under the Licensing Act 2003 s 71 (see PARA 88): Sch 3 para (l). As to club premises certificates see PARA 85 et seq. The register must also contain a record of the accompanying club operating schedule and plan of the premises to which the application relates: Licensing Act 2003 (Licensing authority's register) (other information) Regulations 2005, SI 2005/43, reg 2(1), (2)(d).

4 Ie any application under the Licensing Act 2003 s 117 (see PARAS 115-118): Sch 3 para (w). As to personal licences see PARA 114 et seq.

5 Ie any application under the Licensing Act 2003 s 25: see PARA 59.

6 Ie any application under the Licensing Act 2003 s 79: see PARA 95.

7 Ie any application under the Licensing Act 2003 s 110: see PARA 113. As to temporary event notices see PARA 108 et seq.

8 Ie any application under the Licensing Act 2003 s 126: see PARA 122.

9 See the Licensing Act 2003 Sch 3 paras (b), (m), (u), (x).

10 Ie under the Licensing Act 2003 s 28 (surrender of premises licence: see PARA 61), s 81 (surrender of club premises certificate: see PARA 96) or s 116 (surrender of personal licence: see PARA 127).

11 See the Licensing Act 2003 Sch 3 paras (c), (n), (v).

12 Ie under the Licensing Act 2003 s 29: see PARA 63. The register must also contain a record of the accompanying schedule of works and plans of the work being or about to be done at the premises: Licensing Act 2003 (Licensing authority's register) (other information) Regulations 2005, SI 2005/43, reg 2(1), (2)(b).

13 See the Licensing Act 2003 Sch 3 para (d).

14 Ie under the Licensing Act 2003 s 33 (change of name etc of holder of premises licence: see PARA 67), s 82 or s 83 (notification of change of name etc of club: see PARAS 98, 99), or s 127 (change of name etc of personal licence holder: see PARA 125).

15 See the Licensing Act 2003 Sch 3 paras (e), (o), (y).

16 Ie under the Licensing Act 2003 s 34 (variation of premises licence: see PARA 69) or s 84 (application to vary club premises certificate: see PARA 99). In the case of an application under s 34, the register must also contain a record of the accompanying revised operating schedule (provided that the name and address of the premises supervisor, if any, must be removed from the schedule before it is recorded), if any: Licensing Act 2003 (Licensing authority's register) (other information) Regulations 2005, SI 2005/43, reg 2(1), (2)(c). In the case of an application under the Licensing Act 2003 s 84, the register must also contain a record of the accompanying revised club operating schedule, if any: Licensing Act 2003 (Licensing authority's register) (other information) Regulations 2005, SI 2005/43, reg 2(1), (2)(e).

17 See the Licensing Act 2003 Sch 3 paras (f), (p).

18 Ie under the Licensing Act 2003 s 37: see PARA 69.

19 See the Licensing Act 2003 Sch 3 para (g).

20 Ie under the Licensing Act 2003 s 41: see PARA 72.

21 See the Licensing Act 2003 Sch 3 para (h).

22 Ie under the Licensing Act 2003 s 42: see PARA 73.

23 See the Licensing Act 2003 Sch 3 para (i).

24 Ie under the Licensing Act 2003 s 47: see PARA 76.

25 See the Licensing Act 2003 Sch 3 para (j).

26 Ie under the Licensing Act 2003 s 51 (review of premises licence: see PARA 79) or s 87 (review of club premises certificate: see PARA 103). In the case of an application for a review under s 51 (application for review

of premises licence) and s 87 (application for review of club premises certificate), the register must also contain a record of the ground or grounds for the review: Licensing Act 2003 (Licensing authority's register) (other information) Regulations 2005, SI 2005/43, reg 2(1), (3). In the case of an application for review of a premises licence under the Licensing Act 2003 s 53A (summary reviews on application of senior police officer: see PARA 81) the register must contain a record of the fact that the application has been made, and that it has been made on the basis of the opinion of a senior police officer that the premises are associated with serious crime or serious disorder or both: Licensing Act 2003 (Licensing authority's register) (other information) Regulations 2005, SI 2005/43, reg 2(1), (3A) (reg 2(3A) added by SI 2007/2502).

27 See the Licensing Act 2003 Sch 3 paras (k), (q).

28 le under the Licensing Act 2003 s 103: see PARA 108.

29 See the Licensing Act 2003 Sch 3 para (r).

30 le under the Licensing Act 2003 s 105: see PARA 109.

31 See the Licensing Act 2003 Sch 3 para (s).

32 le under the Licensing Act 2003 s 106: see PARA 109.

33 See the Licensing Act 2003 Sch 3 para (t).

34 le under the Licensing Act 2003 s 165(4): see PARA 171. The register must also contain details of the ground or grounds for the subsequent review of the premises licence under s 167: Licensing Act 2003 (Licensing authority's register) (other information) Regulations 2005, SI 2005/43, reg 2(1), (3).

35 See the Licensing Act 2003 Sch 3 para (z).

36 le under the Licensing Act 2003 Sch 8 para 2 (transitional provisions): see PARA 26. The register must also contain a record of the existing licensable activities and the accompanying plan of the premises to which the existing licence or licences relates or relate: Licensing Act 2003 (Licensing authority's register) (other information) Regulations 2005, SI 2005/43, reg 2(1), (4).

37 See the Licensing Act 2003 Sch 3 para (zi).

38 le under the Licensing Act 2003 Sch 8 para 14 (transitional provisions): see PARA 26. The register must also contain a record of the existing qualifying club activities and the accompanying plan of the premises to which the existing club certificate relates: Licensing Act 2003 (Licensing authority's register) (other information) Regulations 2005, SI 2005/43, reg 2(1), (4).

39 See the Licensing Act 2003 Sch 3 para (zii).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

38 Contents of the register

TEXT AND NOTES--SI 2005/43 amended: SI 2009/1809.

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39. Information and notification.

Where a person with a property interest¹ in any premises² situated in the area of a licensing authority³ gives notice⁴ of his interest to that authority, and the notice is in the prescribed form⁵ and accompanied by the prescribed fee⁶, the notice has effect for a period of 12 months beginning with the day it is received by the licensing authority⁷. If a change relating to the premises to which the notice relates is made to the register⁸ at a time when the notice has effect, the licensing authority must forthwith notify the person who gave the notice of the application, notice or other matter to which the change relates, and of his right⁹ to request a copy of the information contained in any entry in the register¹⁰.

Where the person to whom any document (the 'relevant document') required or authorised by or under the Licensing Act 2003 to be given is a licensing authority, the relevant document must be given by addressing it to the authority and leaving it at or sending it by post to the principal office of the authority, or any other office of the authority specified by it as one at which it will accept documents of the same description as that document¹¹. In any other case, the relevant document may be given to the person in question by delivering it to him, or by leaving it at his proper address¹², or by sending it by post to him at that address¹³. A relevant document may:

- 207 (1) in the case of a body corporate (other than a licensing authority), be given to the secretary or clerk of that body;
- 208 (2) in the case of a partnership, be given to a partner or a person having the control or management of the partnership business;
- 209 (3) in the case of an unincorporated association (other than a partnership), be given to an officer of the association¹⁴.

Information which is held by or on behalf of a licensing authority or a responsible authority¹⁵ may be supplied to a licensing authority or to a responsible authority, for the purposes of facilitating the exercise of the authority's functions under the Licensing Act 2003¹⁶. Information so obtained must not be further disclosed except to a licensing authority or responsible authority for the above purposes¹⁷.

1 For these purposes, a person has a property interest in premises if (1) he has a legal interest in the premises as freeholder or leaseholder; (2) he is a legal mortgagee (within the meaning of the Law of Property Act 1925: see **MORTGAGE** vol 77 (2010) PARA 104) in respect of the premises; (3) he is in occupation of the premises; or (4) he has a prescribed interest in the premises: Licensing Act 2003 s 178(4). 'Prescribed' means prescribed by regulations: s 193. At the date at which this volume states the law, no such regulations had been made.

2 As to the meaning of 'premises' see PARA 27 note 12.

3 For these purposes, a reference to premises situated in the area of a licensing authority includes a reference to premises partly so situated: Licensing Act 2003 s 178(5)(a). As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-38; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

4 As to the method of giving notice see s 184; and the text and notes 11-14.

5 For the prescribed form see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 9, Sch 1. For the Welsh language equivalent see the Licensing Act 2003 (Welsh Language Forms) Order 2007, SI 2007/805. The relevant licensing authority must provide on request the forms listed in the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, Schs 1-13 printed on paper, or, in a case where the relevant licensing authority maintains a website, it may provide electronic copies of the forms listed in those Schedules on such a website: reg 40. A relevant licensing authority may not reject any application or notice by reason only of the fact that it is given on a form provided otherwise than from the relevant licensing authority but which complies with the requirements of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42: reg 41. As to the meaning of 'relevant licensing authority' see PARA 53 note 13.

6 At the date at which this volume states the law, the prescribed fee was £21: see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, reg 8, Sch 6.

7 Licensing Act 2003 s 178(1), (2).

8 'Register' means the register kept under the Licensing Act 2003 s 8 (see PARA 37) by the licensing authority mentioned in the text: s 178(5)(b).

9 Ie under the Licensing Act 2003 s 8: see PARA 37.

10 Licensing Act 2003 s 178(3).

11 Licensing Act 2003 s 184(1), (2).

12 For the purposes of s 184 and the Interpretation Act 1978 s 7 (service of documents by post) in its application to the Licensing Act 2003 s 184, the proper address of any person to whom a relevant document is to be given is his last known address, except that: (1) in the case of a body corporate or its secretary or clerk, it is the address of the registered office of that body or its principal office in the United Kingdom; (2) in the case of a partnership, a partner or a person having control or management of the partnership business, it is that of the principal office of the partnership in the United Kingdom; and (3) in the case of an unincorporated association (other than a partnership) or any officer of the association, it is that of its principal office in the United Kingdom: s 184(5). However, if a relevant document is given to a person in his capacity as the holder of a premises licence, club premises certificate or personal licence, or as the designated premises supervisor under a premises licence, his relevant registered address is also to be treated, for the purposes of s 184 and the Interpretation Act 1978 s 7, as his proper address: Licensing Act 2003 s 184(6). For the purposes of s 184(6), 'relevant registered address', in relation to such a person, means the address given for that person in the record for the licence or certificate (as the case may be) which is contained in the register kept under s 8 by the licensing authority (see PARA 37) which granted the licence or certificate: s 184(7). The Local Government Act 1972 s 231 (service of notices on local authorities etc: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 578) and s 233 (service of notices by local authorities: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 576) do not apply in relation to the service of a relevant document: see the Licensing Act 2003 s 184(8). As to the meaning of 'United Kingdom' see PARA 16 note 8. As to premises licences see PARA 53 et seq; as to club premises certificates see PARA 85 et seq; and as to personal licences see PARA 114 et seq.

13 Licensing Act 2003 s 184(3).

14 Licensing Act 2003 s 184(4).

15 For these purposes, 'responsible authority' means a responsible authority within the meaning of the Licensing Act 2003 Pt 3 (ss 11-59) (see PARA 53 note 26) or Pt 4 (ss 60-97) (see PARA 88 note 14): s 185(4). The information referred to in the text includes information obtained by or on behalf of the authority before the coming into force of s 185 (ie before 7 February 2005: see the Licensing Act 2003 (Commencement No 5) Order 2004, SI 2004/2360, art 2(1), Schedule): see the Licensing Act 2003 s 185(1).

16 Licensing Act 2003 s 185(1), (2).

17 Licensing Act 2003 s 185(3).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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B. LICENSING COMMITTEES

40. Licensing committees.

With the exception of the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple, each licensing authority¹ must establish a licensing committee consisting of at least ten, but not more than 15, members of the authority².

With certain exceptions³, all matters relating to the discharge by such a licensing authority⁴ of its licensing functions are referred to its licensing committee and, accordingly, that committee must discharge those functions on behalf of the authority⁵. A licensing authority may also arrange for the discharge by its licensing committee of any function of the authority which relates to a matter so referred to that committee but which is not a licensing function⁶. Where the licensing authority does not make such arrangements in respect of any such function, it must, unless the matter is urgent, consider a report of its licensing committee with respect to the matter before discharging the function⁷.

Where a matter relates to a licensing function of a licensing authority and to a function of the authority which is not a licensing function ('the other function'), the authority may:

- 210 (1) refer the matter to another of its committees and arrange for the discharge of the licensing function by that committee; or
- 211 (2) refer the matter to its licensing committee (to the extent it is not already so referred⁸) and arrange for the discharge of the other function by the licensing committee⁹; but before exercising this power an authority must consult its licensing committee¹⁰.

In a case where an authority exercises its power:

- 212 (a) under head (1) above, the committee to which the matter is referred must, unless the matter is urgent, consider a report of the authority's licensing committee with respect to the matter before discharging the function concerned¹¹;
- 213 (b) under head (2) above, its licensing committee must, unless the matter is urgent, consider any report of any of the authority's other committees with respect to the matter before discharging the function concerned¹².

Where a licensing committee is unable to discharge any function delegated to it in accordance with the above provisions because of the number of its members who are unable to take part in the consideration or discussion of any matter or vote on any question with respect to it, the committee must refer the matter back to the licensing authority and the authority must discharge that function¹³.

¹ As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

2 Licensing Act 2003 s 6(1), (2). See also the Gambling Act 2005 s 232; and PARAS 536-538.

3 The Licensing Act 2003 s 7(1) (see the text and notes 4-5) does not apply to any function conferred on the licensing authority by s 5 (statement of licensing policy: see PARA 36), or to any function discharged under s 7(5) (a) (see head (1) in the text) by a committee (other than a licensing committee), or any matter relating to the discharge of any such function: s 7(2).

4 Ie a licensing authority other than the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple. In the case of the Inner Temple and the Middle Temple, the licensing authority discharges all its licensing functions: see the Licensing Act 2003 s 7(10).

5 Licensing Act 2003 s 7(1).

6 Licensing Act 2003 s 7(3).

7 Licensing Act 2003 s 7(4).

8 Ie under the Licensing Act 2003 s 7(1).

9 Licensing Act 2003 s 7(5).

10 Licensing Act 2003 s 7(7).

11 Licensing Act 2003 s 7(6).

12 Licensing Act 2003 s 7(8).

13 Licensing Act 2003 s 7(9).

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41. Proceedings of licensing committee.

A licensing committee¹ may establish one or more sub-committees consisting of three members of the committee². Subject to regulations³, each licensing committee may regulate its own procedure and that of its sub-committees⁴.

1 As to licensing committees see PARA 40.

2 Licensing Act 2003 s 9(1). See also the Gambling Act 2005 s 232; and PARAS 536-538.

3 Regulations may make provision about: (1) the proceedings of licensing committees and their sub-committees (including provision about the validity of proceedings and the quorum for meetings); (2) public access to the meetings of those committees and sub-committees; (3) the publicity to be given to those meetings; (4) the agendas and records to be produced in respect of those meetings; and (5) public access to such agendas and records and other information about those meetings: Licensing Act 2003 s 9(2). See the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44; and PARA 44 et seq; the Licensing Act 2003 (Summary Review of Premises Licences) Regulations 2007, SI 2007/2502; and PARA 81. See also the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173; and PARA 476 et seq.

4 Licensing Act 2003 s 9(3).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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42. Sub-delegation of functions of licensing committee etc.

A licensing committee¹ may arrange for the discharge of any functions exercisable by it:

- 214 (1) by a sub-committee established by the licensing committee; or
- 215 (2) by an officer of the licensing authority²;

and such arrangements may provide for more than one sub-committee or officer to discharge the same function concurrently³. Where arrangements are made under head (1) above, then the sub-committee may⁴ in turn arrange for the discharge of the function concerned by an officer of the licensing authority⁵. The power so exercisable by a sub-committee established by a licensing committee is subject to any direction given by that committee to the sub-committee⁶.

Arrangements may not, however, be made under head (1) or head (2) above for the discharge by an officer of any of certain specified⁷ functions⁸.

1 As to licensing committees see PARA 40.

2 Licensing Act 2003 s 10(1). Recommendations as to the delegation of functions are set out in the *Revised Guidance issued under section 182 of the Licensing Act 2003* (28 June 2007, Department for Culture, Media and Sport), para 13.79, Table. That guidance is published on the department's website, accessible at the date at which this volume states the law at www.culture.gov.uk. As to the status of that guidance see 642 HL Official Report (5th series), 17 December 2002, col 629.

3 Licensing Act 2003 s 10(3). As to licensing sub-committees see PARA 41.

4 ie subject to the Licensing Act 2003 s 10(4), (5): see the text and notes 6-8.

5 Licensing Act 2003 s 10(2).

6 Licensing Act 2003 s 10(5).

7 The specified functions are as follows (Licensing Act 2003 s 10(4)(a)-(d) (amended by the Violent Crime Reduction Act 2006 s 22), ie:

10 (1) any function under:

1. (a) the Licensing Act 2003 s 18(3) (determination of application for premises licence where representations have been made: see PARA 55);
1
2. (b) s 31(3) (determination of application for provisional statement where representations have been made: see PARA 64);
2
3. (c) s 35(3) (determination of application for variation of premises licence where representations have been made: see PARA 70);
3
4. (d) s 39(3) (determination of application to vary designated premises supervisor following police objection: see PARA 70);
4

5. (e) s 44(5) (determination of application for transfer of premises licence following police objection: see PARA 74);
5
6. (f) s 48(3) (consideration of police objection made to interim authority notice: see PARA 77);
6
7. (g) s 53A(2)(a) or 53B (determination of interim steps pending summary review: see PARAS 81, 82);
7
8. (h) s 72(3) (determination of application for club premises certificate where representations have been made: see PARA 90);
8
9. (i) s 85(3) (determination of application to vary club premises certificate where representations have been made: see PARA 102);
9
10. (j) s 105(2) (decision to give counter-notice following police objection to temporary event notice: see PARA 109);
10
11. (k) s 120(7) (determination of application for grant of personal licence following police objection: see PARA 118);
11
12. (l) s 121(6) (determination of application for renewal of personal licence following police objection: see PARA 119); or
12
13. (m) s 124(4) (revocation of licence where convictions come to light after grant etc: see PARA 121);
13
 - 11 (2) any function under s 52(2) or (3) (determination of application for review of premises licence: see PARA 80) in a case where relevant representations (within the meaning of s 52(7): see PARA 80 note 14) have been made;
 - 12 (3) any function under s 53C (review following review notice: see PARA 83), in a case where relevant representations (within the meaning of s 53C(7): see PARA 83 note 6) have been made;
 - 13 (4) any function under s 88(2) or (3) (determination of application for review of club premises certificate: see PARA 104) in a case where relevant representations (within the meaning of s 88(7): see PARA 104 note 6) have been made; or
 - 14 (5) any function under s 167(5) (review following closure order: see PARA 172), in a case where relevant representations (within the meaning of s 167(9): see PARA 172 note 17) have been made.

8 Licensing Act 2003 s 10(4).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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C. HEARINGS AND APPEALS

43. Power to prescribe procedure at hearings.

Regulations made by the Secretary of State¹ may prescribe the procedure to be followed in relation to a hearing held by a licensing authority² under the Licensing Act 2003³ and, in particular, may:

- 216 (1) require a licensing authority to give notice of hearings to such persons as may be prescribed⁴;
- 217 (2) make provision for expedited procedures in urgent cases⁵;
- 218 (3) make provision about the rules of evidence which are to apply to hearings⁶;
- 219 (4) make provision about the legal representation at a hearing of the parties to it⁷;
- 220 (5) prescribe the period within which an application, in relation to which a hearing has been held, must be determined or any other step in the procedure must be taken⁸.

A licensing authority may not, however, make any order as to the costs incurred by a party in connection with a hearing under the Licensing Act 2003⁹.

¹ As to the Secretary of State see PARA 2.

² As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

³ Licensing Act 2003 ss 183(1), 193. As to the exercise of this power see the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44; the Licensing Act 2003 (Hearings) (Amendment) Regulations 2005, SI 2005/78; the Licensing Act 2003 (Summary Review of Premises Licences) Regulations 2007, SI 2007/2502; and PARAS 44 et seq, 81.

⁴ Licensing Act 2003 s 183(1)(a). See the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, regs 6, 34. Regulation 6 is set out below in the context of the hearings to which it relates; as to reg 34 (manner of giving notice) see PARA 45 note 2.

⁵ Licensing Act 2003 s 183(1)(b).

⁶ Licensing Act 2003 s 183(1)(c). See the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 19; and PARA 48.

⁷ Licensing Act 2003 s 183(1)(d). See the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 15; and PARA 48.

⁸ Licensing Act 2003 s 183(1)(e). See the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 26; and PARA 49.

⁹ Licensing Act 2003 s 183(2).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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44. Scope of the relevant regulations; time within which a hearing must be held.

The Licensing Act 2003 (Hearings) Regulations 2005¹ make provision for the procedure to be followed in relation to hearings² held under the Licensing Act 2003³ by an authority⁴. Certain of those regulations⁵ do not, however, apply to a hearing⁶ to determine whether it is necessary to take interim steps pending the determination of a summary review of a premises licence⁷.

The authority must arrange for the date on which and time and place at which a hearing is to be held⁸. Time limits are prescribed within which a hearing is to take place⁹. In a case where the hearing is to be held on more than one day, the hearing must be arranged to take place on consecutive working days¹⁰.

¹ I.e. the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44: see the text and notes 2-10; and PARA 45 et seq.

² 'Hearing' means the hearing referred to in the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, Sch 1, Table col 1 as the case may require: reg 2(1). Those hearings are as follows, i.e. hearings under the Licensing Act 2003 s 18(3)(a) (determination of application for premises licence: see PARA 55); s 31(3)(a) (determination of application for a provisional statement: see PARA 64); s 35(3)(a) (determination of application to vary premises licence: see PARA 70); s 39(3)(a) (determination of application to vary premises licence to specify individual as premises supervisor: see PARA 70); s 44(5)(a) (determination of application for transfer of premises licence: see PARA 74); s 48(3)(a) (cancellation of interim authority notice following police objection: see PARA 77); s 52(2) (determination of application for review of premises licence: see PARA 80); s 72(3)(a) (determination of application for club premises certificate: see PARA 90); s 85(3) (determination of application to vary club premises certificate: see PARA 102); s 88(2) (determination of application for review of club premises certificate: see PARA 104); s 105(2)(a) (counter-notice following police objection to temporary event notice: see PARA 109); s 120(7)(a) (determination of application for grant of personal licence: see PARA 118); s 121(6)(a) (determination of application for the renewal of personal licence: see PARA 119); s 124(4)(a) (convictions coming to light after grant or renewal of personal licence: see PARA 121); s 167(5)(a) (review of premises licence following closure order: see PARA 172); Sch 8 paras 4(3)(a), 16(3)(a), 26(3)(a) (determinations of applications for conversion of existing licence or existing club certificate or application by holder of a justices' licence for grant of personal licence under transitional provisions): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, Sch 1, Table col 1.

³ The Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, do not apply to the proceedings of a relevant committee for the purposes of the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173: see reg 3. As to such proceedings see PARA 476 et seq.

⁴ Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 3(1). For these purposes, 'authority' means, in relation to a hearing, the relevant licensing authority which has the duty under the Licensing Act 2003 to hold the hearing, which expression includes the licensing committee or licensing sub-committee discharging the function of holding the hearing: Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 2(1). As to licensing committees see PARA 40; and as to licensing sub-committees see PARAS 41-42.

⁵ I.e. the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, regs 4-13 (see the text and notes 8-10; and PARAS 45-48); regs 16(a), 18, 20(2)(a), (4), 22 (from 'and shall' to the end) (see PARA 48), regs 27, 29 (see PARA 49), reg 34 (see PARA 45 note 2).

⁶ I.e. a hearing under the Licensing Act 2003 s 53B (interim steps pending review): see PARA 82.

⁷ Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 3(2) (added by SI 2007/2502).

⁸ Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 4.

9 See the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 5, Sch 1 col 2.

10 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 5. 'Working day' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales: Licensing Act 2003 s 193.

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45. Notice of hearing and action following receipt of notice.

The authority¹ must give a notice² of hearing to the specified persons³ in accordance with the prescribed requirements⁴. Where no other time limit is prescribed⁵, the notice of hearing must be given no later than ten working days⁶ before the day of the first day on which the hearing is to be held⁷.

The notice of hearing must be accompanied by information regarding the following:

- 221 (1) the rights of a party⁸ with regard to attendance, assistance and representation⁹ and certain rights to give further information, ask questions and address the authority¹⁰;
- 222 (2) the consequences if a party does not attend or is not represented at the hearing;
- 223 (3) the procedure to be followed at the hearing;
- 224 (4) any particular points on which the authority considers that it will want clarification at the hearing from a party¹¹.

Where applicable¹², it must also be accompanied by the documents specified¹³ in relation to the type of hearing in question¹⁴.

A party must give to the authority within the period of time provided for¹⁵ a notice stating:

- 225 (a) whether he intends to attend or be represented at the hearing;
- 226 (b) whether he considers a hearing to be unnecessary¹⁶.

In a case where a party wishes any other person, other than the person he intends to represent him at the hearing, to appear at the hearing, the above-mentioned notice must contain a request for permission for such other person to appear at the hearing accompanied by details of the name of that person and a brief description of the point or points on which that person may be able to assist the authority in relation to the application, representations or notice of the party making the request¹⁷.

1 As to the meaning of 'authority' see PARA 44 note 4.

2 Any notices required to be given by the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, must be given in writing: reg 34(1). Notwithstanding reg 34(1), and subject to reg 34(3), that requirement is satisfied in a case where: (1) the text of the notice (a) is transmitted by electronic means; (b) is capable of being accessed by the recipient; (c) is legible in all material respects; and (d) is capable of being reproduced in written form and used for subsequent reference; (2) the person to whom the notice is to be given has agreed in advance that such a notice may be given to them by electronic means; and (3) forthwith on sending the text of the notice by electronic means, the notice is given to the recipient in writing: reg 34(2). Where the text of the notice is transmitted by electronic means, the giving of the notice is effected at the time the requirements of reg 34(2) (see head (1) above) satisfied: reg 34(3). 'Legible in all material respects' means that the information contained in the notice is available to the recipient to no lesser extent than it would be if given by means of a document in written form: reg 2(1).

- 3 For the persons to whom the notice must be given see the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, Sch 2, Table col 2.
- 4 See the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, regs 5, 6(1).
- 5 The time limits prescribed by the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 6(2), (3) are set out below in the contexts in which they apply.
- 6 As to the meaning of 'working day' see PARA 44 note 10.
- 7 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 6(4) (added by SI 2005/78).
- 8 'Party to the hearing' means a person to whom the notice of hearing is to be given in accordance with the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 6(1); and 'party' and 'parties' are to be construed accordingly: reg 2(1).
- 9 Ie the rights provided for in the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 15: see PARA 48.
- 10 Ie the rights provided for in the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 16: see PARA 48.
- 11 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 7(1).
- 12 Ie in relation to hearings under the provisions listed in the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, Sch 3, Table col 1. Those provisions are noted below in the contexts in which they arise.
- 13 The notice of hearing given to the persons listed in the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, Sch 3, Table col 2 must also be accompanied by the documents listed in Sch 3, Table col 3: Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 7(2). Those persons and documents are noted below in the contexts in which they arise.
- 14 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 7(2).
- 15 Ie provided for in the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 8(3)-(5). Regulation 8(3), (4) provides specific time limits in relation to certain types of hearing which are noted below in the contexts in which they arise. In any other case, the party must give the notice no later than five working days before the day or the first day on which the hearing is to be held: reg 8(5).
- 16 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 8(1).
- 17 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 8(2).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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46. Right to dispense with hearing if all parties agree.

An authority¹ may dispense with holding a hearing² if all persons required by the Licensing Act 2003 to agree that such a hearing is unnecessary, other than the authority itself, have done so by giving notice³ to the authority that they consider a hearing to be unnecessary⁴. Where all the persons required by the 2003 Act to agree that a hearing is unnecessary have done so, the authority, if it agrees that a hearing is unnecessary, must forthwith give notice to the parties⁵ that the hearing has been dispensed with⁶.

1 As to the meaning of 'authority' see PARA 44 note 4.

2 As to the meaning of 'hearing' see PARA 44 note 2.

3 As to the method of giving notice see PARA 45 note 2.

4 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 9(1).

5 As to the meaning of 'parties' see PARA 45 note 8.

6 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 9(2).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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47. Power to extend time etc.

An authority¹ may² extend a time limit provided for in the relevant regulations³ for a specified period where it considers this to be necessary in the public interest⁴. Where the authority has extended a time limit it must forthwith give a notice⁵ to the parties⁶ stating the period of the extension and the reasons for it⁷.

An authority may⁸ also either adjourn a hearing⁹ to a specified date, or arrange for a hearing to be held on specified additional dates, where it considers this to be necessary for its consideration of any representations or notice made by a party¹⁰. Where an authority has adjourned a hearing to a specified date it must forthwith notify the parties of the date, time and place to which the hearing has been adjourned¹¹; and where it has arranged for a hearing to be held on a specified additional date it must forthwith notify the parties of the additional date on which and time and place at which the hearing is to be held¹².

1 As to the meaning of 'authority' see PARA 44 note 4.

2 The subject to the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 13. An authority may not exercise its powers under regs 11, 12 (see the text and notes 3-12) in such a way that the effect will be that (1) an application will be treated as granted or rejected under the Licensing Act 2003 Sch 8 paras 4(4), 7(3), 16(4), 19(3) or 26(4) (transitional provision etc); or (2) it would fail to reach a determination on the review under s 167 (review of premises licence following closure order: see PARA 172) within the period specified in s 167(3); or (3) it would fail to reach a determination on a review under s 53A (summary reviews on application of senior police officer: see PARA 81) within the period specified in s 53A(2)(b): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 13 (amended by SI 2007/2502).

3 The provided for in the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44: see PARAS 44-46, 48 et seq.

4 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 11(1).

5 As to the method of giving notice see PARA 45 note 2.

6 As to the meaning of 'party' and 'parties' see PARA 45 note 8.

7 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 11(2).

8 See note 2.

9 As to the meaning of 'hearing' see PARA 44 note 2.

10 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 12(1).

11 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 12(2).

12 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 12(3).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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48. Procedure at and conduct of the hearing; evidence etc.

The hearing¹ must take place in public²; but the licensing authority may exclude the public (including a party³ and any person assisting or representing a party) from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public⁴. Subject to that, and to the authority's other powers of exclusion⁵, a party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified⁶.

At the hearing a party is entitled:

- 227 (1) in response to a point upon which the authority has given notice to a party that it will want clarification⁷, to give further information in support of his application, representations or notice⁸ as applicable;
- 228 (2) if given permission by the authority, to question any other party; and
- 229 (3) to address the authority⁹.

Members of the authority may ask any question of any party or other person appearing at the hearing¹⁰.

In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of his application, representations or notice, as applicable, either before the hearing or, with the consent of all the other parties, at the hearing¹¹. The authority must, however, disregard any information given by a party or any person to whom permission to appear at the hearing is given by the authority which is not relevant to:

- 230 (a) his application, representations or notice, as applicable, or in the case of another person, the application, representations or notice of the party requesting his appearance; and
- 231 (b) the promotion of the licensing objectives¹² or, in relation to a hearing to consider a notice given by a chief officer of police¹³, the crime prevention objective¹⁴.

If a party has informed the authority that he does not intend to attend or be represented at a hearing, the hearing may proceed in his absence¹⁵. If a party who has not so indicated fails to attend or be represented at a hearing the authority may, where it considers it to be necessary in the public interest, adjourn the hearing to a specified date, or may hold the hearing in the party's absence¹⁶. Where the authority holds the hearing in the absence of a party, the authority must consider at the hearing the application, representations or notice made by that party¹⁷; and where the authority adjourns the hearing to a specified date it must forthwith notify¹⁸ the parties of the date, time and place to which the hearing has been adjourned¹⁹.

Subject to the provisions of the relevant regulations²⁰, the authority must determine the procedure to be followed at the hearing²¹. At the beginning of the hearing, the authority must explain to the parties the procedure which it proposes to follow at the hearing and must

consider any request made by a party²² for permission for another person to appear at the hearing; such permission must not be unreasonably withheld²³. A hearing is to take the form of a discussion led by the authority and cross-examination is not to be permitted unless the authority considers that cross-examination is required for it to consider the representations, application or notice as the case may require²⁴.

The authority may require any person attending the hearing who in its opinion is behaving in a disruptive manner to leave the hearing and may either refuse to permit that person to return, or may permit him to return only on such conditions as the authority may specify. Such a person may, however, before the end of the hearing, submit to the authority in writing any information which he would have been entitled to give orally had he not been required to leave²⁵.

1 As to the meaning of 'hearing' see PARA 44 note 2.

2 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 14(1).

3 As to the meaning of 'party' see PARA 45 note 8.

4 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 14(2), (3).

5 le subject to the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 25: see the text and note 25.

6 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 15.

7 le under the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 7(1)(d): see PARA 45 at head (4).

8 For the purposes of the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, a reference to the application, representations or notice made by a party means the application, representations or notice referred to in relation to that party in Sch 2, Table col 2: reg 2(2). A party who wishes to withdraw any representations he has made may do so (1) by giving notice to the authority no later than 24 hours before the day or the first day on which the hearing is to be held; or (2) orally at the hearing: reg 10.

9 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 16. The authority must allow the parties an equal maximum period of time in which to exercise their rights provided for in reg 16: reg 24. A strict construction of reg 2(1) (meanings of 'party' and 'hearing') in the context of reg 6(1), Sch 2, Table col 1 is capable of resulting in an applicant having no more time to address the sub-committee than one objector.

10 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 17.

11 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 18.

12 As to the licensing objectives see PARA 35.

13 For the purposes of the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 19(b) (see head (b) in the text), a notice given by a chief officer of police does not include an application made, or a certificate given, under the Licensing Act 2003 s 53A(1) (see PARA 81): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 2(4) (added by SI 2007/2502).

14 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 19.

15 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 20(1).

16 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 20(2).

17 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 20(3).

18 As to the method of giving notice see PARA 45 note 2.

19 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 20(4).

20 le subject to the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44: see PARAS 44-47; the text and notes 1-19, 21-25; and PARA 49 et seq.

- 21 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 21.
- 22 le under the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 8(2): see PARA 45.
- 23 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 22.
- 24 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 23.
- 25 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 25.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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49. Determination of applications and notification of determination.

In certain cases¹ the authority² must make its determination³ at the conclusion of the hearing⁴. In any other case the authority must make its determination within the period of five working days⁵ beginning with the day or the last day on which the hearing⁶ was held⁷.

Where a hearing has been dispensed with⁸, the authority must make its determination within the period of ten working days beginning with the day the authority gives the required notice⁹ to the parties¹⁰.

In a case where the Licensing Act 2003 does not make provision for the period within which the authority must notify a party¹¹ of its determination, the authority must do so forthwith on making its determination¹². In a case where the 2003 Act provides for a chief officer of police to be notified of the determination of an authority, and that chief officer of police has not been a party to the hearing, the authority must notify that chief officer of police of its determination, forthwith on making its determination¹³.

Where the authority notifies a party of its determination, the notice given¹⁴ to the party must be accompanied by information regarding the right of a party to appeal against the determination of the authority¹⁵.

1 In the case of a hearing under: (1) the Licensing Act 2003 s 35 or s 39 (see PARA 70) which is in respect of an application made at the same time as an application for conversion of an existing licence under Sch 8 para 2 (determination of application under s 34 or s 37; transitional provisions); (2) s 53B (interim steps pending review: see PARA 82); (3) s 53C (review of premises licence following review notice: see PARA 83); (4) s 85 (see PARA 102) which is in respect of an application made at the same time as an application for conversion of an existing club certificate under Sch 8 para 14 (determination of application under s 85; transitional provisions); (5) s 105(2)(a) (counter-notice following police objection to temporary event notice: see PARA 109); (6) s 167(5) (a) (review of premises licence following closure order: see PARA 172); (7) Sch 8 para 4(3)(a) (determination of application for conversion of existing licence; transitional provisions); (8) Sch 8 para 16(3)(a) (determination of application for conversion of existing club certificate; transitional provisions); or (9) Sch 8 para 26(3)(a) (determination of application by holder of a justices' licence for grant of personal licence; transitional provisions): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 26(1)(a)-(g) (amended by SI 2007/2502).

2 As to the meaning of 'authority' see PARA 44 note 4.

3 The determination of the authority is the outcome of its consideration, as applicable, of (1) the relevant representations as defined in the Licensing Act 2003 s 18(6), in accordance with s 18 (see PARA 55); (2) the relevant representations as defined in s 31(5), in accordance with s 31 (see PARA 64); (3) the relevant representations as defined in s 35(5), in accordance with s 35 (see PARA 70); (4) a notice given under s 37(5) (see PARA 69), in accordance with s 39 (see PARA 70); (5) a notice given under s 42(6) (see PARA 73), in accordance with s 44 (see PARA 74); (6) a notice given under s 48(2), in accordance with s 48 (see PARA 77); (7) an application made in accordance with s 51 (see PARA 79) and any relevant representations as defined in s 52(7), in accordance with s 52 (see PARA 80); (8) the relevant representations as defined in s 72(7), in accordance with s 72 (see PARA 90); (9) the relevant representations as defined in s 85(5), in accordance with s 85 (see PARA 102); (10) an application made in accordance with s 87 (see PARA 103) and any relevant representations as defined in s 88(7), in accordance with s 88 (see PARA 104); (11) a notice given under s 104(2) (see PARA 109), in accordance with s 105 (see PARA 109); (12) a notice given under s 120(5), in accordance with s 120 (see PARA 118); (13) a notice given under s 121(3), in accordance with s 121 (see PARA 119); (14) a notice given under s 124(3), in accordance with s 124 (see PARA 121); (15) the matters referred to in s 167(5)(a), in accordance with s 167 (see PARA 172); (16) the notice given under (a) Sch 8 para 3(2) or (3), in accordance with Sch 8 para 4; (b) Sch 8 para 15(2) or (3), in accordance with Sch 8 para 16; or (c) Sch 8 para 25(2), in

accordance with Sch 8 para 26 (transitional provisions): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 2(1), Sch 4.

4 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 26(1).

5 As to the meaning of 'working day' see PARA 44 note 10.

6 As to the meaning of 'hearing' see PARA 44 note 2.

7 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 26(2).

8 le in accordance with the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 9: see PARA 46.

9 le gives notice under the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 9(2): see PARA 46.

10 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 27.

11 As to the meaning of 'party' see PARA 45 note 8.

12 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 28(1). As to the means of giving the notification see PARA 45 note 2.

13 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 28(2).

14 Or, in the case of a hearing under the Licensing Act 2003 s 31(3)(a) (determination of application for provisional statement: see PARA 64), the statement issued.

15 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 29. As to the procedure on appeals see generally PARA 52.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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50. Record of proceedings.

The authority¹ must provide for a record to be taken of the hearing² in a permanent and intelligible form and kept for six years from the date of the determination³ or, where an appeal is brought against the determination of the authority, the disposal of the appeal⁴.

1 As to the meaning of 'authority' see PARA 44 note 4.

2 As to the meaning of 'hearing' see PARA 44 note 2.

3 As to the meaning of 'determination' see PARA 49 note 3.

4 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 30. As to the procedure on appeals see generally PARA 52.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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51. Irregularities.

Any irregularity resulting from any failure to comply with any provision of the relevant regulations¹ before the authority² has made a determination³ does not of itself render the proceedings void⁴. In any case of such an irregularity, the authority must, if it considers that any person may have been prejudiced as a result of the irregularity, take such steps as it thinks fit to cure the irregularity before reaching its determination⁵.

Clerical mistakes in any document recording a determination of the authority or errors arising in such document from an accidental slip or omission may be corrected by the authority⁶.

- 1 le any provision of the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44: see PARA 44 et seq.
- 2 As to the meaning of 'authority' see PARA 44 note 4.
- 3 As to the meaning of 'determination' see PARA 49 note 3.
- 4 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 31.
- 5 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 32.
- 6 Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 33.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(1) THE LICENSING ACT 2003; IN GENERAL/(ii) Licensing Authorities/C. HEARINGS AND APPEALS/52. Appeals against decisions.

52. Appeals against decisions.

An appeal relating to a premises licence¹, a club premises certificate², a temporary event notice³, a personal licence⁴ or a closure order⁵ is to be made to a magistrates' court⁶. The appeal must be commenced by notice of appeal given to the designated officer for the magistrates' court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority⁷ of the decision appealed against⁸.

On such an appeal against a decision of a licensing authority, a magistrates' court may:

- 232 (1) dismiss the appeal;
- 233 (2) substitute for the decision appealed against any other decision which could have been made by the licensing authority; or
- 234 (3) remit the case to the licensing authority to dispose of it in accordance with the direction of the court,

and may make such order as to costs as it thinks fit⁹. That discretion as to costs applies both to the quantum of the costs, if any, to be paid, and also as to the party, if any, who should pay them. What the court thinks just and reasonable depends on all the relevant facts and circumstances of the case before it; it may think it just and reasonable that costs should follow the event, but need not think so in all cases; where the licensing authority has acted honestly, reasonably, properly and on grounds that reasonably appear to be sound, in exercise of its public duty, the court must consider, in addition to any other relevant fact or circumstances, both the financial prejudice to the particular complainant in the particular circumstances if an order for costs is not made in his favour and the need to encourage public authorities to make and stand by honest, reasonable and apparently sound administrative decisions made in the public interest without fear of exposure to undue financial prejudice if the decision is successfully challenged¹⁰.

1 Ie an appeal under the Licensing Act 2003 Sch 5 Pt 1 (paras 1-9): see PARAS 52, 55, 71, 74, 78, 80, 64. As to the meaning of 'premises licence' see PARA 53 note 1.

2 Ie an appeal under the Licensing Act 2003 Sch 5 Pt 2 (paras 10-15): see PARAS 90, 102, 104, 105. As to the meaning of 'club premises certificate' see PARA 85.

3 Ie an appeal under the Licensing Act 2003 Sch 5 para 16: see PARA 109. As to the meaning of 'temporary event notice' see PARA 108.

4 Ie an appeal under the Licensing Act 2003 Sch 5 para 17: see PARAS 118-119, 121. As to the meaning of 'personal licence' see PARA 114.

5 Ie an appeal under the Licensing Act 2003 Sch 5 para 18: see PARA 172. As to closure orders see PARA 168 et seq.

6 See the Licensing Act 2003 Sch 5 paras 9(1), 15(1), 16(4), 17(6), 18(5) (amended by SI 2005/886). As to the magistrates' court see **MAGISTRATES** vol 29(2) (Reissue) PARA 583 et seq. The appeal before the magistrates' court is not a review of the decision reached at first instance, but rather a complete rehearing: see eg *Sagnata Investments Ltd v Norwich Corp* [1971] 2 QB 614, [1971] 2 All ER 1441, CA; *R v (on the application of the Chief Constable of Lancashire) v Crown Court at Preston, R (on the application of Smith) v Crown Court at Lincoln* [2001] EWHC Admin 928, [2002] 1 WLR 1332, [2001] All ER (D) 166 (Nov). The appellate court ought not to attach any weight to the decision against which the appeal is brought, since the magistrates would not be an

'independent and impartial' tribunal within the meaning of the Human Rights Act 1998 Sch 1 Pt I art 6 if the court started off from a position favouring the decision of the licensing authority, which will itself be a party to the appeal.

7 As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

8 See the Licensing Act 2003 Sch 5 paras 9(2), 15(2), 16(5), 17(7), 18(5) (amended by SI 2005/886).

9 Licensing Act 2003 s 181(2).

10 See *Crawley Borough Council v Attenborough* [2006] EWHC 1278 (Admin) at [8], [2006] LLR 403 at [8], (2006) 170 JP 593, per Scott Baker LJ, applying observations of Lord Bingham CJ in *Bradford City Metropolitan District Council v Booth* (2000) 164 JP 485, (2000) Times, 31 May, made in the context of the Magistrates' Courts Act 1980 s 64(1) (see **MAGISTRATES** vol 29(2) (Reissue) PARA 769) and stating that he saw 'no practical distinction' between the terms of the Licensing Act 2003 s 181 and those of the Magistrates' Courts Act 1980 s 64(1). See also *R (on the application of Cambridge City Council) v Alex Nesting Ltd* [2006] EWHC 1374 (Admin), (2006) 170 JP 539; *Uttlesford District Council v English Heritage* [2007] EWHC 816 (Admin), [2007] LLR 273, [2007] All ER (D) 373 (Mar).

UPDATE

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

52 Appeals against decisions

NOTE 9--See *Prasannan v Royal Borough of Kensington and Chelsea* [2010] EWHC 319 (Admin), [2010] All ER (D) 279 (Feb).

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(2) PREMISES LICENCES/(i) Application for and Grant of Premises Licence/53. Application for licence.

(2) PREMISES LICENCES

(i) Application for and Grant of Premises Licence

53. Application for licence.

The following persons may apply for a premises licence¹:

- 235 (1) a person who carries on, or proposes to carry on, a business which involves the use of the premises for the licensable activities to which the application relates²;
- 236 (2) a person who makes the application pursuant to any statutory function³ discharged by that person which relates to those licensable activities, or any function discharged by that person by virtue of Her Majesty's prerogative⁴;
- 237 (3) a recognised club⁵;
- 238 (4) a charity⁶;
- 239 (5) the proprietor of an educational institution⁷;
- 240 (6) a health service body⁸;
- 241 (7) a person who is registered under the Care Standards Act 2000⁹ in respect of an independent hospital¹⁰;
- 242 (8) the chief officer of police of a police force in England and Wales¹¹;
- 243 (9) a person of such other description as may be prescribed by regulations made by the Secretary of State¹².

An application for a premises licence must be made to the relevant licensing authority¹³. This is subject to regulations¹⁴ about both the form¹⁵ of such applications and the fees¹⁶ to accompany them¹⁷. Such an application must also be accompanied:

- 244 (a) by an operating schedule¹⁸;
- 245 (b) by a plan of the premises to which the application relates, in the prescribed form¹⁹; and
- 246 (c) if the licensable activities to which the application relates ('the relevant licensable activities') include the supply of alcohol, by a form of consent in the prescribed form²⁰ given by the individual whom the applicant wishes to have specified in the premises licence as the premises supervisor²¹.

The Secretary of State must by regulations:

- 247 (i) require an applicant to advertise his application within the prescribed period²² in the prescribed form and in a manner which is prescribed²³ and is likely to bring the application to the attention of the interested parties²⁴ likely to be affected by it²⁵;
- 248 (ii) require an applicant to give notice of his application to each responsible authority²⁶, and such other persons as may be prescribed, within the prescribed period²⁷;

- 249 (iii) prescribe the period during which interested parties and responsible authorities may make representations to the relevant licensing authority about the application²⁸.

An interested party or a responsible authority making representations to a relevant licensing authority about the application may make those representations at any time during a period of 28 consecutive days starting on the day after the day on which the application to which it relates was given to the authority by the applicant²⁹.

1 For the purposes of the Licensing Act 2003, 'premises licence' means a licence granted under Pt 3 (ss 11-59), in respect of any premises, which authorises the premises to be used for one or more licensable activities: s 11. As to the meaning of 'premises' see PARA 27 note 12; and as to licensable activities see PARA 28.

An individual may not apply for a premises licence unless he is aged 18 or over: see s 16(2).

2 Licensing Act 2003 s 16(1)(a). It has been suggested that the use of the phrase 'involves the use of' means that s 16(1) is capable of applying to the landlord of such premises, as well as to the operator or manager: see Paterson's Licensing Acts (116th Edn, 2008) para 1.3515.

3 'Statutory function' means a function conferred by or under any enactment: Licensing Act 2003 s 16(3).

4 Licensing Act 2003 s 16(1)(b).

5 Licensing Act 2003 s 16(1)(c). As to the meaning of 'recognised club' see PARA 32 note 3.

6 Licensing Act 2003 s 16(1)(d). 'Charity' has the same meaning as in the Charities Act 1993 s 96(1) (see **CHARITIES** vol 8 (2010) PARA 1): Licensing Act 2003 s 16(3).

7 Licensing Act 2003 s 16(1)(e). 'Proprietor' (1) in relation to a school within the meaning of the Education Act 1996 s 4 (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 81), has the same meaning as in s 579(1) (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 60); and (2) in relation to an educational institution other than such a school, means the governing body of that institution within the meaning of the Further and Higher Education Act 1992 s 90(1) (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 584 et seq): Licensing Act s 16(3). 'Educational institution' means: (a) a school, or an institution within the further or higher education sector, within the meaning of the Education Act 1996 s 4 (see **EDUCATION** vol 15(2) (2006 Reissue) PARAS 579, 646); or (b) a college (including any institution in the nature of a college), school, hall or other institution of a university, in circumstances where the university receives financial support under the Further and Higher Education Act 1992 s 65 (see **EDUCATION** vol 15 (2006 Reissue) PARA 746): Licensing Act 2003 s 16(3).

8 Licensing Act 2003 s 16(1)(f). 'Health service body' means: (1) an NHS trust established by virtue of the National Health Service Act 2006 s 25 (see **HEALTH SERVICES** vol 54 (2008) PARA 155) or the National Health Service (Wales) Act 2006 s 18 (see **HEALTH SERVICES** vol 54 (2008) PARA 74); (2) a primary care trust established by virtue of the National Health Service Act 2006 s 18 (see **HEALTH SERVICES** vol 54 (2008) PARA 111); or (3) a local health board established by virtue of the National Health Service (Wales) Act 2006 s 11 (see **HEALTH SERVICES** vol 54 (2008) PARA 74): Licensing Act 2003 s 16(3) (definition amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 235, 236).

9 le the Care Standards Act 2000 Pt II (ss 11-42): see **HEALTH SERVICES** vol 54 (2008) PARA 759 et seq.

10 Licensing Act 2003 s 16(1)(g). 'Independent hospital' has the same meaning as in the Care Standards Act 2000 s 2(2) (see **HEALTH SERVICES** vol 54 (2008) PARA 748): Licensing Act 2003 s 16(3).

11 Licensing Act 2003 s 16(1)(h).

12 Licensing Act 2003 ss 16(1)(i), 193. As to the Secretary of State see PARA 2. At the date at which this volume states the law, no regulations had been made prescribing any description of person for these purposes.

13 Licensing Act 2003 s 17(1). The 'relevant licensing authority' is the authority in whose area the premises are situated: s 12(1), (2). Where, however, the premises are situated in the areas of two or more licensing authorities, the relevant licensing authority is: (1) the licensing authority in whose area the greater or greatest part of the premises is situated; or (2) if there is no authority to which head (1) above applies, such one of those authorities as is nominated in accordance with s 12(4): s 12(3). In a case within head (2) above: (a) an applicant for a premises licence must nominate one of the licensing authorities as the relevant licensing authority in relation to the application and any licence granted as a result of it; and (b) an applicant for a statement under s

29 (provisional statement: see PARA 63) in respect of the premises must nominate one of the licensing authorities as the relevant licensing authority in relation to the statement: s 12(4).

14 In the Licensing Act 2003 ss 54, 55. In relation to any application or notice under Pt 3, regulations may prescribe its form, the manner in which it is to be made or given and information and documents that must accompany it: s 54. Regulations may (1) require applications under any provision of Pt 3 (other than s 51: see PARA 79) or notices under s 47 (see PARA 76) to be accompanied by a fee; and (2) prescribe the amount of the fee: s 55(1).

15 For the prescribed form of application see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 10, Sch 2. As to the provision of forms and the validity of applications and notices given on forms not provided by the authority see regs 40, 41, cited in PARA 39 note 5. For the Welsh language equivalent see the Licensing Act 2003 (Welsh Language Forms) Order 2007, SI 2007/805.

An application, a notice or representations under the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, must be given in writing: reg 21(1). Notwithstanding the requirement in reg 21(1) and subject to reg 21(3), that requirement is satisfied in a case where (1) the text of the application, notice or representations is transmitted by electronic means, is capable of being accessed by the recipient, is legible in all material respects and is capable of being read and reproduced in written form and used for subsequent reference; (2) the person to whom the application or notice is to be given or the representations are to be made has agreed in advance that an application or a notice may be given or representations may be made by electronic means; and (3) forthwith on sending the text of the application, notice or representations by electronic means, the application, notice or representations is or are given or made, as applicable, to the recipient in writing: reg 21(2). Where the text of the application, notice or representations is or are transmitted by electronic means, the giving of the application or notice or the making of the representations is effected at the time the requirements of reg 21(2)(a) (see head (1) above) are satisfied, provided that where any application or notice is required to be accompanied by a fee, plan or other document or information that application or notice is not to be treated as given until the fee, plan or other document or information has been received by the relevant licensing authority: reg 21(3). 'Legible in all material respects' means that the information contained in the application, notice or representations is available to the recipient to no lesser extent than it would be if given by means of a document in written form: reg 2(1).

16 The fee is to be determined in accordance with the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, reg 4: see reg 4(1). Subject to reg 4(5), where the maximum number of persons the applicant proposes should, during the times when the licence authorises licensable activities to take place on the premises, be allowed on the premises at the same time is 5,000 or more, an application under reg 4(1) must be accompanied by an additional fee: see reg 4(4) (amended by SI 2005/357). The Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, reg 4(5) does not, however, apply where the premises in respect of which the application has been made: (1) are a structure which is not a vehicle, vessel or movable structure; and (2) have been constructed or structurally altered for the purpose, or for purposes which include the purpose, of enabling (a) the premises to be used for the licensable activities the applicant proposes the licence should authorise; (b) the premises to be modified temporarily from time to time, if relevant, for the premises to be used for the licensable activities referred to in the application; (c) at least the number of persons the applicant proposes should, during the times when the licence authorises licensable activities to take place on the premises, be allowed on the premises, to be allowed on the premises at such times; and (d) the premises to be used in a manner which is not inconsistent with the operating schedule accompanying the application: reg 4(6). Fees are graduated according to the rateable value of the premises: see further reg 3, Sch 1.

In respect of an application which relates to the provision of regulated entertainment only, no fee is payable if the following conditions are satisfied in respect of that application, ie that (i) in the case of an application by a proprietor of an educational institution in respect of premises that are or form part of an educational institution, the educational institution is a school or a college and the provision of regulated entertainment on the premises is carried on by the educational institution for and on behalf of the purposes of the educational institution; or (ii) the application is in respect of premises that are or form part of a church hall, chapel hall or other similar building or a village hall, parish hall or community hall or other similar building: reg 9(1), (2). For these purposes, 'college' means a college or similar institution principally concerned with the provision of full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19; and 'school' means a school within the meaning of the Education Act 1996 s 4 (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 81): Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, reg 2(1).

17 See the Licensing Act 2003 s 17(2).

18 An 'operating schedule' is a document which is in the prescribed form and includes a statement of the following matters: (1) the relevant licensable activities; (2) the times during which it is proposed that the relevant licensable activities are to take place; (3) any other times during which it is proposed that the premises are to be open to the public; (4) where the applicant wishes the licence to have effect for a limited period, that period; (5) where the relevant licensable activities include the supply of alcohol, prescribed information in

respect of the individual whom the applicant wishes to have specified in the premises licence as the premises supervisor; (6) where the relevant licensable activities include the supply of alcohol, whether the supplies are proposed to be for consumption on the premises or off the premises, or both; (7) the steps which it is proposed to take to promote the licensing objectives; (8) such other matters as may be prescribed: Licensing Act 2003 s 17(4). As to completion of the operating schedule see the *Revised Guidance issued under section 182 of the Licensing Act 2003* (28 June 2007, Department for Culture, Media and Sport) paras 8.28-8.32. That guidance is published on the department's website, accessible at the date at which this volume states the law at www.culture.gov.uk. See also PARA 55 note 6. As to the status of that guidance see 642 HL Official Report (5th series), 17 December 2002, col 629. As to the licensing objectives see PARA 35. For the purposes of Pt 3, the 'supply of alcohol' means either the sale by retail of alcohol, or the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club: s 14. As to the meanings of 'sale by retail' and 'alcohol' see PARA 30.

19 Unless the relevant licensing authority has previously agreed in writing with the applicant following a request by the applicant that an alternative scale plan is acceptable to it, in which case the plan must be drawn in that alternative scale, the plan must be drawn in standard scale: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 23(1), (2). For these purposes, 'standard scale' means that 1 millimetre represents 100 millimetres; and 'alternative scale plan' means a plan in a scale other than the standard scale: reg 2(1). The plan must show (1) the extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises; (2) the location of points of access to and egress from the premises; (3) if different from the location of those points of access and egress, the location of escape routes from the premises; (4) in a case where the premises is to be used for more than one licensable activity, the area within the premises used for each activity; (5) fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment; (6) in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor; (7) in a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts; (8) in the case where the premises includes any room or rooms containing public conveniences, the location of the room or rooms; (9) the location and type of any fire safety and any other safety equipment including, if applicable, marine safety equipment; and (10) the location of a kitchen, if any, on the premises: see reg 23(3). The plan may include a legend through which the matters mentioned or referred to in reg 23(3) are sufficiently illustrated by the use of symbols on the plan: reg 23(4).

20 The prescribed form is that set out in the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, Sch 11 Pt A: reg 24(1). As to the provision of forms and the validity of applications and notices given on forms not provided by the authority see regs 40, 41, cited in PARA 39 note 5. For the Welsh language equivalent see the Licensing Act 2003 (Welsh Language Forms) Order 2007, SI 2007/805.

21 Licensing Act 2003 s 17(3).

22 The person making the application must advertise the application, in both cases containing the appropriate information set out in reg 26 (see note 23): (1) for a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority, by displaying a notice: (a) which is of a size equal to or larger than A4, of a pale blue colour, printed legibly in black ink or typed in black in a font of a size equal to or larger than 16; (b) in all cases, prominently at or on the premises to which the application relates where it can be conveniently read from the exterior of the premises and in the case of a premises covering an area of more than 50 metres square, a further notice in the same form and subject to the same requirements every 50 metres along the external perimeter of the premises abutting any highway; and (2) by publishing a notice (a) in a local newspaper or, if there is none, in a local newsletter, circular or similar document, circulating in the vicinity of the premises; (b) on at least one occasion during the period of ten working days starting on the day after the day on which the application was given to the relevant licensing authority: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 25.

23 In all cases, the notices referred to in the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 25 (see note 22) must state (1) the name of the applicant or club; (2) the postal address of the premises or club premises, if any, or if there is no postal address for the premises a description of those premises sufficient to enable the location and extent of the premises or club premises to be identified; (3) the postal address and, where applicable, the worldwide web address where the register of the relevant licensing authority is kept and where and when the record of the application may be inspected; (4) the date by which an interested party or responsible authority may make representations to the relevant licensing authority; (5) that representations must be made in writing; and (6) that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for the offence: reg 26(4). The notices must also contain a statement of the relevant licensable activities which it is proposed will be carried on on or from the premises: reg 26(1).

24 'Interested party' means any of the following: (1) a person living in the vicinity of the premises; (2) a body representing persons who live in that vicinity; (3) a person involved in a business in that vicinity; (4) a body representing persons involved in such businesses: Licensing Act 2003 s 13(3). See eg *R (on the application of 4 Wins Leisure Ltd) v Licensing Committee for Blackpool Council* [2007] EWHC 2213 (Admin), [2008] LLR 128, [2007] All ER (D) 185 (Aug) (competitor's premises less than a kilometre away from the relevant premises; not irrational to decide that competitor was not an 'interested party').

25 Licensing Act 2003 s 17(5)(a).

26 The person making the application must give notice of his application to each responsible authority by giving to each authority a copy of the application together with its accompanying documents, if any, on the same day as the day on which the application is given to the relevant licensing authority: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 27. 'Responsible authority' means any of the following: (1) the chief officer of police for any police area in which the premises are situated; (2) the fire and rescue authority for any area in which the premises are situated; (3) the enforcing authority within the meaning given by the Health and Safety at Work etc Act 1974 s 18 (see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 375) for any area in which the premises are situated; (4) the local planning authority within the meaning given by the Town and Country Planning Act 1990 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28 et seq) for any area in which the premises are situated; (5) the local authority by which statutory functions are exercisable in any area in which the premises are situated in relation to minimising or preventing the risk of pollution of the environment or of harm to human health; (6) a body which: (a) represents those who, in relation to any such area, are responsible for, or interested in, matters relating to the protection of children from harm; and (b) is recognised by the licensing authority for that area for the purposes of the Licensing Act 2003 s 13 as being competent to advise it on such matters; (7) any licensing authority (other than the relevant licensing authority) in whose area part of the premises is situated; (8) in relation to a vessel: (a) a navigation authority (within the meaning of the Water Resources Act 1991 s 221(1): see **WATER AND WATERWAYS** vol 100 (2009) PARA 189) having functions in relation to the waters where the vessel is usually moored or berthed or any waters where it is, or is proposed to be, navigated at a time when it is used for licensable activities; (b) the Environment Agency; (c) the British Waterways Board; or (d) the Secretary of State; (9) a person prescribed for these purposes: Licensing Act 2003 s 13(4) (amended by the Fire and Rescue Services Act 2004 Sch 1 para 98(1), (2), (3)(b)). The local weights and measures authority (within the meaning of the Weights and Measures Act 1985 s 69: see **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 20) for any area in which the premises are situated is a responsible authority for these purposes: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 7. As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq. As to the British Waterways Board see **WATER AND WATERWAYS** vol 101 (2009) PARA 725 et seq.

27 Licensing Act 2003 s 17(5)(b).

28 Licensing Act 2003 s 17(5)(c).

29 Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 22(1)(b).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

53 Application for licence

TEXT AND NOTES--Licensing Act 2003 s 25A (added by SI 2009/1724) provides for the inclusion of an application for an alternative licence condition relating to the supervision of alcohol sales in community premises in an application for a premises licence. Where a management committee of community premises makes an

application under Licensing Act 2003 s 17 for a premises licence authorising the supply of alcohol, the application may include an application for the alternative licence condition to be included in the licence instead of the conditions in Licensing Act 2003 s 19(2), (3) (see PARA 57): Licensing Act 2003 s 25A(1). 'Management committee', in relation to any community premises, means a committee or board of individuals with responsibility for the management of the premises; and 'community premises' means premises that are or form part of (1) a church hall, chapel hall or other similar building; or (2) a village hall, parish hall, community hall or other similar building: Licensing Act 2003 s 193 (definitions added by SI 2009/1724). 'The alternative licence condition' is the condition that every supply of alcohol under the premises licence must be made or authorised by the management committee: Licensing Act 2003 s 25A(2). Where an application under s 17 includes an application under s 25A(1), provision is made for the modification of ss 17-19: see Licensing Act 2003 s 25A(3)-(6).

NOTE 15--SI 2005/42 reg 10 substituted: SI 2009/1809. SI 2005/42 reg 21 substituted, regs 21A, 21B added so as enable applications, notices and representations to be given by electronic means: SI 2009/3159.

NOTE 16--As to the fee to accompany an application for minor variation of a premises licence under the Licensing Act 2003 s 41A, see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79 reg 4A (added by SI 2009/1809).

NOTE 19--SI 2005/42 reg 2(1) amended to omit definition of 'standard scale', reg 23(2) substituted: SI 2009/3159.

NOTE 22--SI 2005/42 reg 25 amended: SI 2009/1809.

NOTE 23--As to the prescribed application for minor variation of a premises licence or club premises certificate under the Licensing Act 2003 s 41A or s 86A, see SI 2005/42 reg 26A (added by SI 2009/1809 and amended by SI 2009/3159).

TEXT AND NOTES 26, 27--Licensing Act 2003 s 17(5)(b) repealed: SI 2009/2999. The Secretary of State may by regulations (1) require an applicant to give notice of his application to each responsible authority, and such other persons as may be prescribed, within the prescribed period; and (2) in a case where the application is made by means of a relevant electronic facility, require the relevant licensing authority to give notice of the application to such persons as may be prescribed within the prescribed period: Licensing Act 2003 s 17(6) (added by SI 2009/2999). 'Relevant electronic facility' means (a) the electronic assistance facility referred to in Provision of Services Regulations 2009, SI 2009/2999, reg 38 (see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 385A); or (b) any facility established and maintained by a licensing authority for the purpose of receiving applications, notices or representations electronically: Licensing Act 2003 s 193 (definition added by SI 2009/2999).

NOTE 26--SI 2005/42 reg 27 substituted, reg 27A added to provide for notice where specified applications are made by electronic means: SI 2009/3159.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(2) PREMISES LICENCES/(i) Application for and Grant of Premises Licence/54. Inspection of premises before grant of licence.

54. Inspection of premises before grant of licence.

A constable¹ or an authorised person² may, at any reasonable time before the determination of a relevant application³, enter the premises⁴ to which the application relates to assess: (1) in the case of a grant of a licence, a provisional statement or a variation of a licence⁵, the likely effect of the grant of the application on the promotion of the licensing objectives⁶; and (2) in the case of a review of a licence⁷, the effect of the activities authorised by the premises licence⁸ on the promotion of those objectives⁹.

An authorised person exercising the above power must, if so requested, produce evidence of his authority to exercise the power¹⁰. A constable or an authorised person exercising such power in relation to an application for review of a premises licence¹¹ may, if necessary, use reasonable force¹².

A person commits an offence if he intentionally obstructs an authorised person exercising the above power¹³. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale¹⁴.

1 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

2 'Authorised person' means any of the following: (1) an officer of a licensing authority in whose area the premises are situated who is authorised by that authority for the purposes of the Licensing Act 2003; (2) an inspector appointed by the fire and rescue authority for the area in which the premises are situated; (3) an inspector appointed under the Health and Safety at Work etc Act 1974 s 19 (see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 375); (4) an officer of a local authority, in whose area the premises are situated, who is authorised by that authority for the purposes of exercising one or more of its statutory functions in relation to minimising or preventing the risk of pollution of the environment or of harm to human health; (5) in relation to a vessel, an inspector, or a surveyor of ships, appointed under the Merchant Shipping Act 1995 s 256 vol 93 (2008) PARA 46; (6) a person prescribed for these purposes by regulations made by the Secretary of State: Licensing Act 2003 ss 13(2), 193 (s 13(2) amended by SI 2005/1541). As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 For these purposes, 'relevant application' means an application under the Licensing Act 2003 s 17 (grant of licence: see PARA 53), s 29 (provisional statement: see PARA 63), s 34 (variation of licence: see PARA 69), or s 51 (review of licence: see PARA 79): s 59(1). As to the determination of the application see PARA 55.

4 As to the meaning of 'premises' see PARA 27 note 12.

5 See the Licensing Act 2003 s 59(1)(a)-(c); and note 3.

6 As to the licensing objectives see PARA 35.

7 See the Licensing Act 2003 s 59(1)(d); and note 3.

8 As to the meaning of 'premises licence' see PARA 53 note 1.

9 Licensing Act 2003 s 59(2).

10 Licensing Act 2003 s 59(3).

11 Ie an application under the Licensing Act 2003 s 51: see PARA 79. See also s 59(1)(d); the text to note 7; and note 3.

12 Licensing Act 2003 s 59(4).

13 See the Licensing Act 2003 s 59(5). As to the offence of intentionally obstructing a constable in the execution of his duties see the Police Act 1996 s 89(2); and **POLICE** vol 36(1) (2007 Reissue) PARA 481.

14 Licensing Act 2003 s 59(6). As to the standard scale see PARA 17 note 21.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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55. Determination of application and rights of appeal.

Where the relevant licensing authority¹ receives an application for a premises licence² and it is satisfied that the applicant has complied with any relevant requirement imposed on him³, the authority must, unless relevant representations⁴ are made⁵, grant the licence in accordance with the application subject only to: (1) such conditions as are consistent with the operating schedule accompanying the application⁶; and (2) any mandatory conditions⁷ with regard to the supply of alcohol, the exhibition of films or door supervision⁸.

Where relevant representations are made, the authority must: (a) hold a hearing to consider them⁹, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary; and (b) having regard to the representations, take such of the steps mentioned in heads (i) to (iv) below, if any, as it considers necessary for the promotion of the licensing objectives¹⁰. Those steps are:

- 250 (i) to grant the licence subject to the conditions mentioned in head (1) above modified¹¹ to such extent as the authority considers necessary for the promotion of the licensing objectives, and any mandatory condition mentioned in head (2) above which must¹² be included in the licence¹³;
- 251 (ii) to exclude from the scope of the licence any of the licensable activities to which the application relates¹⁴;
- 252 (iii) to refuse to specify a person in the licence as the premises supervisor¹⁵;
- 253 (iv) to reject the application¹⁶.

Where an application is granted¹⁷, the relevant licensing authority must forthwith:

- 254 (A) give a notice to that effect to the applicant, any person who made relevant representations¹⁸ in respect of the application, and the chief officer of police for the police area (or each police area) in which the premises are situated¹⁹; and
- 255 (B) issue the applicant with the licence and a summary of it²⁰.

The holder of the licence may appeal²¹ against any decision to impose conditions on the licence under head (1) or head (b) above, or to take any step mentioned in head (ii) or head (iii) above²²; and where a person who made relevant representations in relation to the application desires to contend either that the licence ought not to have been granted, or that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in head (ii) or head (iii) above, he may appeal against the decision²³.

Where an application is rejected²⁴, the relevant licensing authority must forthwith give a notice to that effect, stating its reasons for the decision, to the applicant, to any person who made relevant representations in respect of the application, and to the chief officer of police for the police area (or each police area) in which the premises are situated²⁵. The applicant may appeal²⁶ against the decision²⁷.

1 As to the meaning of 'relevant licensing authority' see PARA 53 note 13. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-

42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

2 le an application made in accordance with the Licensing Act 2003 s 17: see PARA 53. As to the meaning of 'premises licence' see PARA 53 note 1.

3 le any requirement imposed on him under the Licensing Act 2003 s 17(5): see PARA 53.

4 For these purposes, 'relevant representations' means representations which:

- 15 (1) are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives (Licensing Act 2003 s 18(6)(a));
- 16 (2) meet the requirements: (a) that the representations were made by an interested party or responsible authority within the period prescribed under s 17(5)(c) (see PARA 53); (b) that they have not been withdrawn; and (c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious (s 18(6)(b), (7));
- 17 (3) if they relate to the identity of the person named in the application as the proposed premises supervisor, meet the requirements that the representations: (a) were made by a chief officer of police for a police area in which the premises are situated; and (b) include a statement that, due to the exceptional circumstances of the case, he is satisfied that the designation of the person concerned as the premises supervisor under the premises licence would undermine the crime prevention objective (s 18(6)(c), (9)); and
- 18 (4) are not excluded representations by virtue of s 32 (restriction on making representations following issue of provisional statement: see PARA 65) (s 18(6)(d)).

Where the authority determines for the purposes of s 18(7)(c) (see head (2)(c) above) that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for its determination: s 18(8). Where the relevant licensing authority notifies the person who made the representations that the representations are frivolous, vexatious or a repetition as the case requires, that notification must be given in writing to the person who made the representations as soon as is reasonably practicable and in any event before the determination of the application to which the representations relate: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 31.

As to the meanings of 'interested party' and 'responsible authority' see PARA 53 notes 24, 26. In the Licensing Act 2003, references to the 'designated premises supervisor', in relation to a premises licence, are references to the individual for the time being specified in that licence as the premises supervisor: s 15(1). Nothing in the 2003 Act prevents an individual who holds a premises licence from also being specified in the licence as the premises supervisor: s 15(2). As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

5 le subject to the Licensing Act 2003 s 18(3): see heads (a)-(b) in the text.

6 As to the operating schedule see the Licensing Act 2003 s 17(4); and PARA 53. The licensing authority has no power to dictate the contents of an application and has no power to assess an application, or to exercise substantive discretionary powers in relation to it, unless there are relevant representations and the decision-making function under s 18(3) is engaged: *R (on the application of the British Beer and Pub Association) v Canterbury City Council* [2005] EWHC 1318 (Admin), [2006] LGR 596, sub nom *British Beer and Pub Association, Association of Licensed Multiple Retailers and British Institute of Innkeeping v Canterbury City Council* (2005) 169 JP 521.

7 le any conditions which must under the Licensing Act 2003 s 19, s 20 or s 21 (see PARA 57) be included in the licence.

8 Licensing Act 2003 s 18(1), (2). In discharging its duty under s 18(2) or s 18(3)(b) (see head (b) in the text), a licensing authority may grant a licence under s 18 subject to different conditions in respect of different parts of the premises concerned and different licensable activities: s 18(10). As to licensable activities see PARA 28.

9 Notice of the hearing must be given to the person who has made the application under s 17(1) and persons who have made relevant representations as defined in s 18(6) (see note 4): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, Sch 2, Table para 1. The notice must be accompanied by the relevant representations: Sch 3, Table para 1. The hearing must be commenced within 20 working days beginning with the day after the end of the period during which representations may be made as prescribed under the Licensing Act 2003 s 17(5)(c) (see PARA 53): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, Sch 1,

Table para 1. As to the meaning of 'working day' see PARA 44 note 10; and as to the method of giving notice see PARA 45 note 2.

10 Licensing Act 2003 s 18(3). As to the licensing objectives see PARA 35.

11 For these purposes, the conditions mentioned in the Licensing Act 2003 s 18(2)(a) (see head (1) in the text) are modified if any of them is altered or omitted or any new condition is added: s 18(5).

12 le under the Licensing Act 2003 s 19, s 20 or s 21: see PARA 57.

13 Licensing Act 2003 s 18(4)(a). A condition that 'amplified sound from the licensed premises shall not be clearly audible at the boundary of any noise sensitive premises' was held on appeal to be insufficiently precise: see *Uttlesford District Council v English Heritage* [2007] EWHC 816 (Admin), [2007] All ER (D) 373 (Mar).

14 Licensing Act 2003 s 18(4)(b).

15 Licensing Act 2003 s 18(4)(c).

16 Licensing Act 2003 s 18(4)(d).

17 le granted under the Licensing Act 2003 s 18: see the text and notes 1-16.

18 Where relevant representations were made in respect of the application, the notice under the Licensing Act 2003 s 23(1)(a) (see head (A) in the text) must state the authority's reasons for its decision as to the steps (if any) to take under s 18(3)(b) (see head (b) in the text): s 23(2). For the purposes of s 19, 'relevant representations' has the meaning given in s 18(6) (see note 4): s 23(4).

19 Licensing Act 2003 s 23(1)(a). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.

20 Licensing Act 2003 s 23(1)(b). As to the form of the licence and summary see PARA 56.

21 le to the magistrates' court: see PARA 52. For a consideration of whether a responsible authority and/or an interested party (as defined by the Licensing Act 2003 s 13: see PARA 53 notes 25, 27), which opposes the grant of a licence, are entitled to be respondents to an appeal in addition to the licensing authority, see (2007) 11 Magistrates' Court Practice 1, 22. The issue has resulted in a different number of conflicting decisions being made by the magistrates' courts. In *Lucas v Westminster City Council* (2006) [65] Licensing Review (April/May 2006) 44, heard at Horseferry Road magistrates' court on 11 November 2005, District Judge Purdy ruled that any interested party or responsible authority which had successfully opposed an application before the licensing authority was entitled to be a respondent to an appeal, holding that the Licensing Act 2003 Sch 5 could be perfectly properly construed as meaning that an 'interested party' could of right be a respondent to an appeal. In other cases, justices have arrived at precisely the opposite conclusion (see, eg *Pitcher & Piano v Manchester City Council* (2006) [65] Licensing Review (April/May 2006) 45).

22 Licensing Act 2003 Sch 5 para 2(1), (2). As to the procedure for bringing the appeal, and the powers of the magistrates' court which hears it, see PARA 52.

23 Licensing Act 2003 Sch 5 para 2(3), (4). In such a case, the holder of the premises licence is to be the respondent in addition to the licensing authority: Sch 5 para 9(3).

24 le under the Licensing Act 2003 s 18.

25 Licensing Act 2003 s 23(3).

26 See note 21.

27 See the Licensing Act 2003 Sch 5 para 1(a). As to the procedure for bringing the appeal, and the powers of the magistrates' court which hears it, see PARA 52.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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NOTE 23--See *R (on the application of Chief Constable of Nottinghamshire Police) v Nottingham Magistrates' Court* [2009] EWHC 3182 (Admin), [2010] 2 All ER 342 (right of interested parties or responsible authorities to appear on appeal).

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56. Form of licence.

A premises licence¹ and the summary of a premises licence must be in the prescribed² form³. Regulations⁴ must, in particular, provide for the licence to:

- 256 (1) specify the name and address of the holder;
- 257 (2) include a plan of the premises⁵ to which the licence relates;
- 258 (3) if the licence has effect for a limited period, specify that period;
- 259 (4) specify the licensable activities⁶ for which the premises may be used;
- 260 (5) if the licensable activities include the supply of alcohol⁷, specify the name and address of the individual, if any, who is the premises supervisor⁸ in respect of the licence;
- 261 (6) specify the conditions subject to which the licence has effect⁹.

A premises licence must include an identifier for the relevant licensing authority¹⁰ and include a number that is unique to the licence¹¹; and a summary of a premises licence must include the identifier for the relevant licensing authority and include the licence number¹².

1 As to the meaning of 'premises licence' see PARA 53 note 1.

2 'Prescribed' means prescribed by regulations made by the Secretary of State: Licensing Act 2003 s 193. As to the Secretary of State see PARA 2.

3 Licensing Act 2003 s 24(1). For the prescribed form of premises licence see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 33(c), Sch 12 Pt A; and for the prescribed form of summary see reg 34(c), Sch 12 Pt B. For the Welsh language equivalents see the Licensing Act 2003 (Welsh Language Forms) Order 2007, SI 2007/805.

4 The regulations under the Licensing Act 2003 s 24(1): see note 3.

5 As to the meaning of 'premises' see PARA 27 note 12.

6 As to the licensable activities see PARA 28.

7 As to the meaning of 'supply of alcohol' see PARA 53 note 18.

8 As to the meaning of 'designated premises supervisor' see PARA 55 note 4.

9 Licensing Act 2003 s 24(2).

10 As to the meaning of 'relevant licensing authority' see PARA 53 note 13.

11 Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 33(a), (b).

12 Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 34(a), (b).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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57. Conditions of premises licences.

Where a premises licence¹ authorises the supply of alcohol², the licence must include the following conditions³. The first condition is that no supply of alcohol may be made under the premises licence: (1) at a time when there is no designated premises supervisor⁴ in respect of the premises licence; or (2) at a time when the designated premises supervisor does not hold a personal licence⁵ or his personal licence is suspended⁶. The second condition is that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence⁷.

Where a premises licence authorises the exhibition of films, the licence must include a condition requiring the admission of children⁸ to the exhibition of any film to be restricted in accordance with any recommendation made:

- 262 (a) by the film classification body⁹, where that body is specified in the licence¹⁰;
or
- 263 (b) by the relevant licensing authority¹¹ where either the film classification body is not specified in the licence, or the authority has notified the holder of the licence that recommendations made by the authority apply to the film in question¹².

Where a premises licence includes a condition that at specified times one or more individuals must be at the premises¹³ to carry out a security activity¹⁴, then subject to certain exceptions¹⁵ the licence must include a condition that each such individual must either be authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001 or be entitled, by virtue of being exempt from the requirement for a licence under that Act¹⁶, to carry out that activity¹⁷.

In relation to a premises licence which authorises the performance of plays, no condition may be attached to the licence as to the nature of the plays which may be performed or the manner of performing plays under the licence¹⁸; but this does not prevent a licensing authority imposing¹⁹ any condition which it considers necessary on the grounds of public safety²⁰.

Where a premises licence authorises the supply of alcohol²¹ for consumption on the premises, and the provision of music entertainment²², and the premises are used primarily for the supply of alcohol for consumption on the premises, and have a permitted capacity²³ of not more than 200 persons, then at any time when the premises are open for the purposes of being used for the supply of alcohol for consumption on the premises, and are being used for the provision of music entertainment, and heads (A) and (B) below do not apply²⁴, any licensing authority imposed condition²⁵ of the premises licence which relates to the provision of music entertainment does not have effect, in relation to the provision of that entertainment, unless it falls within head (i) or head (ii) below²⁶. A condition falls:

- 264 (i) within this head if the premises licence specifies that the licensing authority which granted the licence considers the imposition of the condition necessary on one or both of the following grounds, namely the prevention of crime and disorder and public safety²⁷;
- 265 (ii) within this head if, on a review of the premises licence²⁸, it is altered so as to include a statement that the statutory provision relating to dancing and small

music in certain small premises²⁹ does not apply to it, or it is added to the licence and includes such a statement³⁰.

Where a premises licence authorises the provision of music entertainment, and the premises have a permitted capacity of not more than 200 persons, then:

- 266 (A) at any time between the hours of 8 am and midnight when the premises are being used for the provision of music entertainment which consists of the performance of unamplified, live music, or facilities for enabling persons to take part in such entertainment, but
- 267 (B) are not being used for the provision of any other description of regulated entertainment³¹,

any licensing authority imposed condition of the premises licence which relates to the provision of the music entertainment does not have effect, in relation to the provision of that entertainment, unless it falls within head (ii) above³².

There is also a general prohibition on the sale of alcohol at motorway and certain other service areas and from premises used primarily as a garage³³.

A local housing authority³⁴ may provide, in connection with the provision of housing accommodation by the authority under Part II of the Housing Act 1985³⁵, facilities for obtaining meals and refreshments³⁶. Where a premises licence authorises the sale by retail of alcohol in connection with the provision of facilities of that kind, then, notwithstanding the terms of that licence, it does not have effect so as to authorise the sale by retail of alcohol for consumption otherwise than with a meal³⁷.

1 As to the meaning of 'premises licence' see PARA 53 note 1.

2 As to the meaning of 'supply of alcohol' see PARA 53 note 18; and as to the meaning of 'alcohol' see PARA 30.

3 Licensing Act 2003 s 19(1).

4 As to the meaning of 'designated premises supervisor' see PARA 55 note 4.

5 As to personal licences see PARA 114 et seq.

6 Licensing Act 2003 s 19(2).

7 Licensing Act 2003 s 19(3).

8 For these purposes, 'children' means persons aged under 18: Licensing Act 2003 s 20(4).

9 For these purposes, 'film classification body' means the person or persons designated as the authority under the Video Recordings Act 1984 s 4 (authority to determine suitability of video works for classification: see PARA 279): Licensing Act 2003 s 20(4).

10 Licensing Act 2003 s 20(1), (2).

11 As to the meaning of 'relevant licensing authority' see PARA 53 note 13. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

12 See the Licensing Act 2003 s 20(3).

13 As to the meaning of 'premises' see PARA 27 note 12.

14 For these purposes, 'security activity' means an activity to which the Private Security Industry Act 2001 Sch 2 para 2(1)(a) (see **TRADE AND INDUSTRY** vol 97 (2010) PARA 894) applies and which is licensable conduct for the purposes of that Act (see s 3(2); and **TRADE AND INDUSTRY** vol 97 (2010) PARA 893); Licensing Act 2003 s 21(3)(a) (amended by the Violent Crime Reduction Act 2006 s 25(1), (3)). As to the private security industry and its regulation see **TRADE AND INDUSTRY** vol 97 (2010) PARA 887 et seq.

15 Nothing in the Licensing Act 2003 requires such a condition as is described in the text to notes 16-17 to be imposed (1) in respect of premises within the Private Security Industry Act 2001 Sch 2 para 8(3)(a) (premises with premises licences authorising plays or films: see **TRADE AND INDUSTRY** vol 97 (2010) PARA 897); or (2) in respect of premises in relation to (a) any occasion mentioned in Sch 2 para 8(3)(b) or (c) (premises being used exclusively by club with club premises certificate, under a temporary event notice authorising plays or films or under a gaming licence: see **TRADE AND INDUSTRY** vol 97 (2010) PARA 895); or (b) any occasion within Sch 2 para 8(3)(d) (occasions prescribed by regulations under that Act: see **TRADE AND INDUSTRY** vol 97 (2010) PARA 895): Licensing Act 2003 s 21(2). For these purposes, the Private Security Industry Act 2001 Sch 2 para 8(5) (interpretation of references to an occasion: see **TRADE AND INDUSTRY** vol 97 (2010) PARA 895) applies as it applies in relation to Sch 2 para 8: Licensing Act 2003 s 21(3)(b).

16 Ie entitled by virtue of the Private Security Industry Act 2001 s 4: see **TRADE AND INDUSTRY** vol 97 (2010) PARA 896.

17 Licensing Act 2003 s 21(1) (amended by the Violent Crime Reduction Act 2006 s 25(1), (2)).

18 Licensing Act 2003 s 22(1).

19 Ie in accordance with the Licensing Act 2003 s 18(2)(a) or (3)(b) (see PARA 55), s 35(3)(b) (see PARA 70) or s 52(3) (see PARA 80).

20 Licensing Act 2003 s 22(2).

21 For these purposes, 'supply of alcohol' means (1) the sale by retail of alcohol; or (2) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club: Licensing Act 2003 s 177(8). As to the meaning of 'sale by retail' see PARA 30; and as to the supply of alcohol to members of a club see s 70; and PARA 86 note 4.

22 For these purposes, 'music entertainment' means (1) entertainment of a description falling within, or of a similar description to that falling within, the Licensing Act 2003 Sch 1 para 2(1)(e) or (g) (see PARA 31); or (2) facilities enabling persons to take part in entertainment within head (1) above: Licensing Act 2003 s 177(8).

23 For these purposes, 'permitted capacity', in relation to any premises, means the limit on the number of persons who may be on the premises at any one time in accordance with a recommendation made by, or on behalf of, the fire and rescue authority for the area in which the premises are situated (or, if the premises are situated in the area of more than one fire and rescue authority, those authorities): Licensing Act 2003 s 177(8) (definition amended by the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 98(1), (2), (3)(d); and by SI 2005/1541).

24 Ie the Licensing Act 2003 s 177(4) does not apply.

25 For these purposes, 'licensing authority imposed condition' means a condition which is imposed by virtue of s 18(3)(b) (but is not referred to in s 18(2)(a)) (see PARA 55) or which is imposed by virtue of s 35(3)(b), s 52(3) or s 167(5)(b) (see PARAS 70, 80, 172) or in accordance with s 21 (see the text and notes 13-17): Licensing Act 2003 s 177(8).

26 Licensing Act 2003 s 177(1), (2).

27 Licensing Act 2003 s 177(5).

28 As to reviews of premises licences see PARA 79 et seq.

29 Ie the Licensing Act 2003 s 177: see the text and notes 21-28, 30-32.

30 Licensing Act 2003 s 177(6).

31 As to the provision of regulated entertainment see PARA 31.

32 Licensing Act 2003 s 177(3), (4). As to the application of s 177 to a club premises certificate see s 177(7); and PARA 93.

33 No premises licence, club premises certificate or temporary event notice has effect to authorise the sale by retail or supply of alcohol on or from excluded premises: Licensing Act 2003 s 176(1). For these purposes, 'excluded premises' means (1) premises situated on land acquired or appropriated by a special road authority, and for the time being used, for the provision of facilities to be used in connection with the use of a special road provided for the use of traffic of class I (with or without other classes); or (2) premises used primarily as a garage or which form part of premises which are primarily so used: s 176(2). The Secretary of State may by order amend the definition of excluded premises in s 176(2) so as to include or exclude premises of such description as may be specified in the order: s 176(3). At the date at which this volume states the law, no such order had been made. As to the Secretary of State see PARA 2; as to club premises certificates see PARA 85 et seq; and as to temporary event notices see PARA 108 et seq.

For these purposes: (a) 'special road' and 'special road authority' have the same meaning as in the Highways Act 1980 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 731 et seq), except that 'special road' includes a trunk road to which (by virtue of Sch 23 para 3: see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 731) the provisions of that Act apply as if the road were a special road; (b) 'class I' means class I in the Highways Act 1980 Sch 4 as varied from time to time by an order under s 17 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 736), but if Sch 4 is amended by such an order so as to add to it a further class of traffic, the order may adapt the reference in the Licensing Act 2003 s 176(2)(a) to traffic of class I so as to take account of the additional class; and (c) premises are used as a garage if they are used for one or more of the following (i) the retailing of petrol; (ii) the retailing of derv; (iii) the sale of motor vehicles; (iv) the maintenance of motor vehicles: Licensing Act 2003 s 176(4). See also *Green v Inner London Licensing Justices* (1994) Licensing Review (October), QBD; *R v Liverpool Crown Court, ex p Goodwin* (1999) Licensing Review (July) 21, QBD.

34 A local housing authority in carrying on activities under the Housing Act 1985 s 11 (see the text and notes 35-37) is subject to all relevant enactments and rules of law, including enactments relating to the sale of intoxicating liquor or the sale by retail of alcohol, in the same manner as other persons carrying on such activities: Housing Act 1985 s 11(4) (amended by the Licensing Act 2003 Sch 6 paras 102, 103(b)). As to local housing authorities see **HOUSING** vol 22 (2006 Reissue) PARA 9.

35 le under the Housing Act 1985 Pt II (ss 8-57): see **HOUSING** vol 22 (2006 Reissue) PARA 225 et seq.

36 Housing Act 1985 s 11(1)(a).

37 Housing Act 1985 s 11(3) (substituted by Licensing Act 2003 Sch 6 paras 102, 103(a)).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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58. Annual fee for premises licence.

Regulations made by the Secretary of State¹ may require the holder of a premises licence² to pay the relevant licensing authority³ an annual fee⁴. Such regulations may include provision prescribing the amount of the fee, and the time at which any such fee is due⁵. Any such fee which is owed to a licensing authority may be recovered as a debt due to the authority⁶.

The requirement to pay to the relevant licensing authority an annual fee does not, however, apply in a circumstance where on the date the fee becomes due and payable the following conditions are satisfied, namely that:

- 268 (1) the premises licence in respect of the premises⁷ to which it relates authorises the provision of regulated entertainment⁸ only; and
- 269 (2) either:
 - 13
 - 23. (a) the holder of the premises licence is the proprietor of an educational institution which is a school⁹ or college¹⁰, the licence has effect in respect of premises that are or form part of the educational institution, and the provision of regulated entertainment on the premises is carried on by the educational institution for and on behalf of the purposes of the educational institution; or
 - 24. (b) the premises licence has effect in respect of premises that are or form part of a church hall, chapel hall or other similar building or a village hall, parish hall or community hall or other similar building¹¹.
- 14

1 As to the Secretary of State see PARA 2.

2 As to the meaning of 'premises licence' see PARA 53 note 1.

3 As to the meaning of 'relevant licensing authority' see PARA 53 note 13.

4 Licensing Act 2003 ss 55(2), 193.

5 Licensing Act 2003 s 55(3). The prescribed amount of the annual fee is determined in accordance with the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, reg 5 and is due and payable each year on the anniversary of the date of the grant of the premises licence (see reg 5(6)). Fees are graduated according to the rateable value of the premises: see further reg 3, Sch 1. In December 2006 the Independent Licensing Fees Review Panel, chaired by Sir Leslie Elton, submitted its final report to the Secretary of State for Culture, Media and Sport. A copy of the report may be found on the department's website, accessible at the date at which this volume states the law at www.culture.gov.uk.

6 Licensing Act 2003 s 55(4).

7 As to the meaning of 'premises' see PARA 27 note 12.

8 As to the provision of regulated entertainment see PARA 31.

9 As to the meaning of 'school' see PARA 53 note 16.

10 As to the meaning of 'college' see PARA 53 note 16.

11 Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, reg 10.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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59. Theft, loss etc of premises licence or summary.

Where a premises licence¹ or summary is lost, stolen, damaged or destroyed, the holder of the licence may apply to the relevant licensing authority² for a copy of the licence or summary³. The prescribed fee must accompany the application⁴.

Where an application is made in accordance with these provisions, the relevant licensing authority must issue the holder of the licence with a copy of the licence or summary, certified by the authority to be a true copy, if it is satisfied that:

- 270 (1) the licence or summary has been lost, stolen, damaged or destroyed; and
- 271 (2) where it has been lost or stolen, the holder has reported that loss or theft to the police⁵.

The copy so issued must be a copy of the premises licence or summary in the form in which it existed immediately before it was lost, stolen, damaged or destroyed⁶; and the Licensing Act 2003 applies in relation to a copy so issued as it applies in relation to an original licence or summary⁷.

1 As to the meaning of 'premises licence' see PARA 27 note 12.

2 As to the meaning of 'relevant licensing authority' see PARA 53 note 13; and as to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 Licensing Act 2003 s 25(1).

4 See the Licensing Act 2003 s 25(2), which provides that s 25(1) is subject to regulations under s 55(1) (fee to accompany applications: see PARA 53 note 14). At the date at which this volume states the law, the fee was £10.50: see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, reg 8, Sch 6.

5 Licensing Act 2003 s 25(3).

6 Licensing Act 2003 s 25(4). As to the form of the licence and summary see PARA 56; and as to conditions in the licence see PARA 57.

7 Licensing Act 2003 s 25(5).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(2) PREMISES LICENCES/(ii) Duration of Premises Licence/60. Duration of licence.

(ii) Duration of Premises Licence

60. Duration of licence.

A premises licence¹ has effect² until such time as it is revoked³ or, if it specifies that it has effect for a limited period, until that period expires⁴. It does not, however, have effect during any period when it is suspended⁵.

1 As to the meaning of 'premises licence' see PARA 53 note 1.

2 Ie subject to the Licensing Act 2003 s 27 or s 28 (see PARAS 61, 62).

3 Ie revoked under the Licensing Act 2003 s 52: see PARA 79.

4 Licensing Act 2003 s 26(1).

5 Licensing Act 2003 s 26(2). The reference in the text to the licence being suspended is a reference to its being suspended under s 52. As to such suspension see PARA 79. Note that a licence may also be suspended for non-payment of an alcohol disorder zone charge: see the Local Authorities (Alcohol Disorder Zones) Regulations 2008, SI 2008/1430, reg 20; PARA 218; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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61. Surrender of licence.

Where the holder of a premises licence¹ wishes to surrender his licence he may give the relevant licensing authority² a notice³ to that effect⁴.

The notice must be accompanied by the premises licence or, if that is not practicable, by a statement of the reasons for the failure to provide the licence⁵. Where a notice of surrender is given in accordance with the above requirements, the premises licence lapses on receipt of the notice by the authority⁶.

1 As to the meaning of 'premises licence' see PARA 53 note 1.

2 As to the meaning of 'relevant licensing authority' see PARA 53 note 13; and as to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 As to the method of giving notice see s 184; and PARA 39 text and notes 11-14. See also s 54; and PARA 53 note 14.

4 Licensing Act 2003 s 28(1). A record of such notice will appear in the licensing register (see Sch 3 para (c); and PARA 37) and notice of that change in the register must be given to any person who has given notice of his interest under s 178(1) (see PARA 39) (see s 178(3)).

5 Licensing Act 2003 s 28(2).

6 Licensing Act 2003 s 28(3). Section 28 is subject to s 50 (which makes provision for the reinstatement in certain circumstances of a licence surrendered under s 28: see PARA 75): s 28(4).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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62. Lapse of licence.

A premises licence¹ lapses if the holder of the licence dies or becomes a person who lacks capacity² to hold the licence, or becomes insolvent³, or in the case of a company is dissolved, or in the case of a club ceases to be a recognised club⁴.

A premises licence also lapses on receipt by the licensing authority of a notice of surrender⁵.

1 As to the meaning of 'premises licence' see PARA 53 note 1.

2 Ie within the meaning of the Mental Capacity Act 2005: see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 641.

3 For these purposes, an individual becomes insolvent on (1) the approval of a voluntary arrangement proposed by him; (2) being adjudged bankrupt or having his estate sequestrated; or (3) entering into a deed of arrangement made for the benefit of his creditors or a trust deed for his creditors (Licensing Act 2003 s 27(3)); and a company becomes insolvent on (a) the approval of a voluntary arrangement proposed by its directors; (b) the appointment of an administrator in respect of the company; (c) the appointment of an administrative receiver in respect of the company; or (d) going into liquidation (s 27(4)). An expression used in s 27 and in the Insolvency Act 1986 has the same meaning in s 27 as in that 1986 Act: Licensing Act 2003 s 27(5). See generally **BANKRUPTCY AND INDIVIDUAL INSOLVENCY; COMPANY AND PARTNERSHIP INSOLVENCY**.

See also *R (on the application of Borwok Ltd (in Administration)) v Newham London Borough Council* (13 December 2005, unreported) where an interim injunction was granted restraining the licensing authority and the police from closing premises and permission was given to proceed with an application for judicial review of the licensing authority's contention that the premises licence had lapsed following an 'insolvent event' which had taken place prior to the full implementation of the Licensing Act 2003 on 24 November 2005; the licence was subsequently transferred and the proceedings were discontinued.

4 Licensing Act 2003 s 27(1) (amended by the Mental Capacity Act 2005 Sch 6 para 46(1), (2)). The Licensing Act 2003 s 27 is subject to ss 47, 50 (which make provision for the reinstatement of the licence in certain circumstances: see PARAS 73, 76): s 27(2).

5 See the Licensing Act 2003 s 28(3); and PARA 61.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(2) PREMISES LICENCES/(iii) Provisional Statement/63. Application for a provisional statement where premises being built, etc.

(iii) Provisional Statement

63. Application for a provisional statement where premises being built, etc.

The following provisions apply to premises¹ which:

- 272 (1) are being or are about to be constructed² for the purpose of being used for one or more licensable activities³; or
- 273 (2) are being or are about to be extended or otherwise altered for that purpose, whether or not they are already being used for that purpose⁴.

They do not, however, apply in relation to a vessel⁵, vehicle⁶ or movable structure⁷ not in a permanent situation⁸.

A person may apply to the relevant licensing authority⁹ for a provisional statement¹⁰ if he is interested in the premises, and, where he is an individual, he is aged 18 or over¹¹. This is subject to regulations made by the Secretary of State¹² as to the form of the application¹³ and the fee¹⁴ to accompany it¹⁵. Such an application must also be accompanied by a schedule of works¹⁶, which is a document in the prescribed form¹⁷ which includes:

- 274 (a) a statement made by or on behalf of the applicant including particulars of the premises to which the application relates and of the licensable activities for which the premises are to be used;
- 275 (b) plans of the work being or about to be done at the premises; and
- 276 (c) such other information as may be prescribed¹⁸.

Where an application is made under the above provisions, the duty imposed on the Secretary of State to make regulations about the advertisement of the application¹⁹ applies in relation to such an application as it applies in relation to an application²⁰ for a premises licence²¹.

The prescribed method of advertising the application, and the general information which must be included, is the same as in the case of an application for a premises licence²². The relevant notices²³ must also state that representations are restricted after the issue of a provisional statement and, where known, may state the relevant licensable activities which it is proposed will be carried on on or from the premises²⁴.

1 As to the meaning of 'premises' see PARA 27 note 12.

2 For a case arising out of similar provisions in the Gambling Act 2005 concerning the ability of the proposed operator of a betting office to apply for a betting premises licence rather than a provisional statement (under s 204) see *R (on the application of Betting Shop Services Ltd) v Southend-on-Sea Borough Council* [2007] EWHC 105 (Admin), [2008] All ER (D) 15 (Jan), cited in PARA 471 note 30.

3 As to licensable activities see PARA 28.

4 Licensing Act 2003 s 29(1).

5 Is a vessel to which the Licensing Act 2003 s 189 (see PARA 27) applies. As to the meaning of 'vessel' see PARA 27 note 11.

6 Ie a vehicle to which the Licensing Act 2003 s 189 (see PARA 27) applies. As to the meaning of 'vehicle' see PARA 27 note 14.

7 Ie a movable structure to which the Licensing Act 2003 s 189 (see PARA 27) applies.

8 See the Licensing Act 2003 s 189(5).

9 As to the meaning of 'relevant licensing authority' see PARA 53 note 13; and as to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

10 'Provisional statement' means a statement issued under the Licensing Act 2003 31(2) or (3)(c) (see PARA 64): s 29(3).

11 Licensing Act 2003 s 29(2). The person making the application must give notice of his application to each responsible authority by giving to each authority a copy of the application together with its accompanying documents, if any, on the same day as the day on which the application is given to the relevant licensing authority: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 27. As to the meaning of 'responsible authority' see PARA 53 note 26.

12 Ie under the Licensing Act 2003 ss 54, 55: see PARA 53 note 14. As to the Secretary of State see PARA 2.

13 For the prescribed form of application see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 11, Sch 3. As to the provision of forms and the validity of applications and notices given on forms not provided by the authority see regs 40, 41, cited in PARA 39 note 5. For the Welsh language equivalent see the Licensing Act 2003 (Welsh Language Forms) Order 2007, SI 2007/805.

14 At the date at which this volume states the law, the prescribed fee was £315: see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, reg 8, Sch 6.

15 Licensing Act 2003 s 29(4).

16 Licensing Act 2003 s 29(5).

17 See note 13.

18 Licensing Act 2003 s 29(6).

19 Ie the duty imposed by the Licensing Act 2003 s 17(5): see PARA 53.

20 Ie an application under the Licensing Act 2003 s 17: see PARA 53.

21 Licensing Act 2003 s 30(1), (2). Regulations made under s 17(5)(a) by virtue of s 30(2) may, in particular, require advertisements to contain a statement in the prescribed form describing the effect of s 32 (restriction on representations following issue of a provisional statement: see PARA 65): s 30(3).

22 See the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, regs 25, 26(4), cited in PARA 53 notes 22-23.

23 Ie the notices referred to in the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 25.

24 Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 26(2).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

63 Application for a provisional statement where premises being built, etc

NOTE 11--SI 2005/42 reg 27 substituted, reg 27A added: see PARA 53.

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64. Determination of application for provisional statement and rights of appeal.

Where the relevant licensing authority¹ receives a provisional statement application², and is satisfied that the applicant has complied with any requirement imposed on him to advertise the application³, the following provisions apply⁴.

Where no relevant representations⁵ are made, the authority must issue the applicant with a statement to that effect⁶.

Where relevant representations are made, the authority must:

- 277 (1) hold a hearing⁷ to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary;
- 278 (2) determine whether, on the basis of those representations and the provisional statement application, it would consider it necessary to take any steps for the promotion of the licensing objectives⁸ if, on the work being satisfactorily completed⁹, it had to decide whether to grant a premises licence¹⁰ in the form described in the provisional statement application; and
- 279 (3) issue the applicant with a statement which gives details of that determination, and states the authority's reasons for its decision as to the steps, if any, that it would be necessary to take¹¹ for the promotion of the licensing objectives¹².

Where a provisional statement is issued under head (3) above, an appeal against the decision may be made¹³ by the applicant, or by any person who made relevant representations in relation to the application¹⁴.

The licensing authority must give a copy of the provisional statement to each person who made relevant representations, and to the chief officer of police¹⁵ for each police area in which the premises¹⁶ are situated¹⁷.

1 As to the meaning of 'relevant licensing authority' see PARA 53 note 13; and as to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

2 For these purposes, 'provisional statement application' means an application made in accordance with the Licensing Act 2003 s 29 (see PARA 63): s 31(8).

3 ie any requirement imposed on him by virtue of the Licensing Act 2003 s 30: see PARA 63.

4 Licensing Act 2003 s 31(1).

5 For these purposes, 'relevant representations' means representations (1) which are about the likely effect on the licensing objectives of the grant of a premises licence in the form described in the provisional statement application, if the work at the premises was satisfactorily completed; and (2) which meet the requirements of the Licensing Act 2003 s 31(6): s 31(5). The requirements are: (a) that the representations are made by an interested party or responsible authority within the period prescribed under s 17(5)(c) by virtue of s 30 (see PARA 53 text and note 29); (b) that the representations have not been withdrawn; and (c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the

opinion of the relevant licensing authority, frivolous or vexatious: s 31(6). Where the authority determines for the purposes of s 31(6)(c) that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for its determination: s 31(7). As to that notification see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 31, cited in PARA 55 note 4. As to the meanings of 'interested party' and 'responsible authority' see PARA 53 notes 24, 26; and as to the licensing objectives see PARA 35.

6 Licensing Act 2003 s 31(2).

7 Notice of the hearing must be given to the person who has made the application under the Licensing Act 2003 s 29(2) (see PARA 63), and it must be accompanied by the relevant representations which have been made, as defined in s 31(5) (see note 5): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 7, Sch 3, Table para 2. Notice of the hearing must also be given to the persons who have made relevant representations: see reg 6, Sch 2, Table para 2. The hearing must be held within 20 working days beginning with the day after the end of the period during which representations may be made as prescribed under the Licensing Act 2003 s 17(5)(c) by virtue of s 30: Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 5, Sch 1, Table para 2. As to the procedure at the hearing, or when a hearing is dispensed with, see PARA 44 et seq.

8 le any steps under the Licensing Act 2003 s 18(3)(b): see PARA 55.

9 For the purposes of the Licensing Act 2003 Pt 3 (ss 11-59), in relation to any premises in respect of which an application for a provisional statement has been made, references to the work being satisfactorily completed are to work at the premises being completed in a manner which substantially complies with the schedule of works accompanying the application: s 29(7). As to the schedule of works see PARA 63.

10 As to the meaning of 'premises licence' see PARA 53 note 1.

11 See note 8.

12 See the Licensing Act 2003 s 31(3). As to the time within which the determination must be made see PARA 49.

13 le to a magistrates' court: see PARA 52.

14 Licensing Act 2003 Sch 5 para 3(1)-(3). In the case of an appeal by a person who made relevant representations, the holder of the premises licence is to be the respondent in addition to the licensing authority: Sch 5 para 9(3). As to the procedure for bringing the appeal, and the powers of the magistrates' court which hears it, see PARA 52.

15 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

16 As to the meaning of 'premises' see PARA 27 note 12.

17 Licensing Act 2003 s 31(4).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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65. Restriction on representations following provisional statement.

The following provisions apply where a provisional statement¹ has been issued in respect of any premises² ('the relevant premises') and a person subsequently applies for a premises licence³ in respect of the relevant premises or a part of them, or premises that are substantially the same as the relevant premises or a part of them⁴. Where:

- 280 (1) the application for the premises licence is an application for a licence in the same form as the licence described in the application for the provisional statement; and
- 281 (2) the work described in the schedule of works⁵ accompanying the application for that statement has been satisfactorily completed⁶,

then if:

- 282 (a) given the information provided in the application for the provisional statement, the relevant person could have made the same, or substantially the same, representations about that application but failed to do so, without reasonable excuse; and
- 283 (b) there has been no material change in circumstances relating either to the relevant premises or to the area in the vicinity of those premises since the provisional statement was made,

representations made by a person ('the relevant person') in respect of the application for the premises licence are excluded⁷ representations⁸.

1 As to the meaning of 'provisional statement' see PARA 63 note 10.

2 As to the meaning of 'premises' see PARA 27 note 12.

3 As to the meaning of 'premises licence' see PARA 53 note 1.

4 Licensing Act 2003 s 32(1).

5 As to the schedule of works see PARA 63.

6 As to the meaning of 'satisfactorily completed' see PARA 64 note 9.

7 Ie for the purposes of the Licensing Act 2003 s 18(6)(d): see PARA 55.

8 Licensing Act 2003 s 32(3), (4).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(iv) Duties with regard to Premises Licences

66. Duty to keep and produce licence.

Whenever premises¹ in respect of which a premises licence² has effect are being used for one or more licensable activities³ authorised by the licence, the holder of the premises licence must secure that the licence or a certified copy⁴ of it is kept at the premises in the custody or under the control of the holder of the licence, or of a person who works at the premises and whom the holder of the licence has nominated in writing for these purposes⁵. He must also secure that the summary of the licence⁶ or a certified copy of that summary and a notice specifying the position held at the premises by any person nominated as described above are prominently displayed at the premises⁷. The holder of a premises licence commits an offence if he fails, without reasonable excuse, to comply with the above requirements⁸.

A constable⁹ or an authorised person¹⁰ may require the person who, by virtue of arrangements made for the purposes of keeping the licence at the premises¹¹, is required to have the premises licence, or a certified copy of it, in his custody or under his control to produce the licence, or such a copy, for examination¹². An authorised person exercising this power must, if so requested, produce evidence of his authority to exercise the power¹³. A person commits an offence if he fails, without reasonable excuse, to produce a premises licence or certified copy of a premises licence in accordance with a requirement under these provisions¹⁴.

1 As to the meaning of 'premises' see PARA 27 note 12.

2 As to the meaning of 'premises licence' see PARA 53 note 1.

3 As to licensable activities see PARA 28.

4 The Licensing Act 2003 s 58 makes provision about certified copies of documents for these purposes: s 57(10). Any reference in s 57 to a certified copy of any document is a reference to a copy of that document which is certified to be a true copy by the relevant licensing authority, a solicitor or notary, or a person of a prescribed description: s 58(1). 'Prescribed' means prescribed by regulations made by the Secretary of State: s 193. As to the Secretary of State see PARA 2.

5 Licensing Act 2003 s 57(1), (2).

6 The reference in the text to the summary of the licence is a reference to the summary issued under s 23 (see PARA 55) or, where one or more summaries have subsequently been issued under s 56 (see PARA 68), the most recent summary to have been so issued: s 57(9).

7 Licensing Act 2003 s 57(3).

8 Licensing Act 2003 s 57(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 57(8). As to the standard scale see PARA 17 note 21.

9 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

10 As to the meaning of 'authorised person' see PARA 54 note 2.

11 Ie the arrangements made for the purposes of the Licensing Act 2003 s 57(2).

12 Licensing Act 2003 s 57(5). Any certified copy produced in accordance with a requirement under s 57(5) must be a copy of the document in the form in which it exists at the time: s 58(2). A document which purports

to be a certified copy of a document is to be taken to be such a copy, and to comply with the requirements of s 58(2), unless the contrary is shown: s 58(3).

13 Licensing Act 2003 s 57(6).

14 Licensing Act 2003 s 57(7). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 57(8).

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

66 Duty to keep and produce licence

NOTE 4--'Notary' means a person (other than a solicitor) who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to any activity which constitutes a notarial activity (within the meaning of that Act) (see **LEGAL PROFESSIONS** vol 65 (2008) PARA 521): Licensing Act 2003 s 58(4) (added by Legal Services Act 2007 Sch 21 para 140).

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(2) PREMISES LICENCES/(iv) Duties with regard to Premises Licences/67. Notification of change of name and address.

67. Notification of change of name and address.

The holder of a premises licence¹ must, as soon as is reasonably practicable, notify the relevant licensing authority² of any change:

- 284 (1) in his name or address; and
- 285 (2) unless the designated premises supervisor³ has already notified the authority⁴, in the name or address of that supervisor⁵.

Such notification must be accompanied by the prescribed fee⁶. It must also be accompanied by the premises licence, or the appropriate part of the licence, or, if that is not practicable, by a statement of the reasons for the failure to produce the licence or part⁷.

A person commits an offence if he fails, without reasonable excuse, to comply with the above requirements⁸.

1 As to the meaning of 'premises licence' see PARA 53 note 1.

2 As to the meaning of 'relevant licensing authority' see PARA 53 note 13; and as to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 As to the meaning of 'designated premises supervisor' see PARA 55 note 4.

4 Where the designated premises supervisor under a premises licence is not the holder of the licence, he may notify the relevant licensing authority of any change in his name or address: Licensing Act 2003 s 33(4). Where the designated premises supervisor gives such a notice, he must, as soon as is reasonably practicable, give the holder of the premises licence a copy of that notice: s 33(5). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14. See also s 54; and PARA 53 note 14.

5 Licensing Act 2003 s 33(1).

6 See the Licensing Act 2003 s 33(2). At the date at which this volume states the law, the prescribed fee was £10.50: see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, Sch 6.

7 Licensing Act 2003 s 33(3).

8 Licensing Act 2003 s 33(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 33(7). As to the standard scale see PARA 17 note 21.

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(2) PREMISES LICENCES/(iv) Duties with regard to Premises Licences/68. Licensing authority's duty to update licence document.

68. Licensing authority's duty to update licence document.

Where:

- 286 (1) the relevant licensing authority¹, in relation to a premises licence², makes a determination or receives a notice under Part 3 of the Licensing Act 2003³;
- 287 (2) a premises licence lapses under Part 3 of that Act⁴; or
- 288 (3) an appeal against a decision under Part 3 of that Act is disposed of⁵,

the relevant licensing authority must make the appropriate amendments, if any, to the licence and, if necessary, issue a new summary of the licence⁶.

Where a licensing authority is not in possession of the licence, or the appropriate part of the licence, it may, for the purposes of discharging its obligations under the above provisions, require the holder of a premises licence to produce the licence, or the appropriate part, to the authority within 14 days from the date on which he is notified of the requirement⁷. A person commits an offence if he fails, without reasonable excuse, to comply with such a requirement⁸.

1 As to the meaning of 'relevant licensing authority' see PARA 53 note 13; and as to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

2 As to the meaning of 'premises licence' see PARA 53 note 1.

3 I.e. the Licensing Act 2003 Pt 3 (ss 11-59): see PARAS 53 et seq, 69 et seq.

4 As to when a licence lapses see PARA 60.

5 As to appeals see PARA 52.

6 Licensing Act 2003 s 56(1).

7 Licensing Act 2003 s 56(2). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.

8 Licensing Act 2003 s 56(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 56(4). As to the standard scale see PARA 17 note 21.

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(2) PREMISES LICENCES/(v) Variation of Licences/69. Application to vary premises licence.

(v) Variation of Licences

69. Application to vary premises licence.

The holder of a premises licence¹ may apply to the relevant licensing authority² for variation of the licence³. This is subject to regulations made by the Secretary of State⁴ as to the form of applications⁵ and fees⁶ to accompany applications⁷. Such an application must also be accompanied by the premises licence, or the appropriate part of that licence, or, if that is not practicable, by a statement of the reasons for the failure to provide the licence or part⁸.

The duty imposed on the Secretary of State⁹ to make regulations about the advertisement of applications applies in relation to such applications as it applies in relation to applications¹⁰ for the grant of a premises licence¹¹. The prescribed method of advertising the application, and the general information which must be included, is the same as in the case of an application for a premises licence¹². The relevant notices¹³ must also briefly describe the proposed variation¹⁴.

Different statutory provisions apply to an application¹⁵ to vary a premises licence to specify an individual as premises supervisor¹⁶. If the licence authorises the supply of alcohol¹⁷, or if the holder of the licence has applied under the above provisions to vary the licence so that it authorises such supplies, then he may apply to vary the licence so as to specify the individual named in the application ('the proposed individual') as the premises supervisor¹⁸. This is also subject to regulations made by the Secretary of State¹⁹ as to the form of applications²⁰ and fees²¹ to accompany applications²². Such an application must be accompanied by:

- 289 (1) a form of consent in the prescribed form²³ given by the proposed individual; and
- 290 (2) the premises licence, or the appropriate part of that licence, or, if that is not practicable, a statement of the reasons for the failure to provide the licence or part²⁴.

The holder of the premises licence must give notice of his application to the chief officer of police²⁵ for the police area, or each police area, in which the premises²⁶ are situated, and to the designated premises supervisor²⁷, if there is one, and that notice must state whether the application is one which includes a request²⁸ that the variation applied for should have immediate effect²⁹. Where a chief officer of police so notified is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective³⁰, he must give the relevant licensing authority a notice stating the reasons why he is so satisfied³¹, within the period of 14 days beginning with the day on which he is notified³² of the application³³.

Where an application so made to vary a premises licence to specify an individual as premises supervisor³⁴, in respect of a premises licence which authorises the supply of alcohol, includes a request that the variation applied for should have immediate effect, the premises licence has effect during the application period³⁵ as if it were varied in the manner set out in the application³⁶.

1 As to the meaning of 'premises licence' see PARA 53 note 1.

2 As to the meaning of 'relevant licensing authority' see PARA 53 note 13; and as to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 Licensing Act 2003 s 34(1). The person making the application must give notice of his application to each responsible authority by giving to each authority a copy of the application together with its accompanying documents, if any, on the same day as the day on which the application is given to the relevant licensing authority: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 27. As to the meaning of 'responsible authority' see PARA 53 note 26.

There is a considerable divergence of views as to the precise circumstances when an application for variation is appropriate. The issue is addressed in the *Revised Guidance issued under section 182 of the Licensing Act 2003* (28 June 2007, Department for Culture, Media and Sport) paras 8.33-8.38. That guidance is published on the department's website, accessible at the date at which this volume states the law at www.culture.gov.uk. As to the status of that guidance see 642 HL Official Report (5th series), 17 December 2002, col 629. In November 2007 the Government published a consultation document entitled 'Proposal to Introduce a Simplified Process for Minor Variations to Premises Licences and Club Premises Certificates'. The paper indicated that, prior to consultation, the Government's preferred option was to amend the Licensing Act 2003 to introduce a new process for minor variations, broadly defined as any variation that does not impact adversely on the promotion of the licensing objectives, and to leave licensing authorities to decide whether a variation is 'minor' within the broad parameters described above and having regard to general criteria and case studies provided in the statutory guidance, with a requirement to consult relevant authorities as they judge necessary, depending on the individual circumstances of the variation. In *R (on the application of JD Wetherspoon plc) v Guildford Borough Council* [2006] EWHC 815 (Admin), [2007] 1 All ER 400, [2006] LGR 767, the question arose as to whether a variation which merely sought an increase in trading hours could be a 'material variation' for the purposes of the special policy dealing with cumulative impact. Beatson J held that the words 'material variation' were capable of including a variation of hours if the potential effect of any such variation could be said to be directly relevant to the cumulative impact policy.

4 Ie regulations under the Licensing Act 2003 ss 54, 55: see PARA 53 note 14. As to the Secretary of State see PARA 2.

5 For the prescribed form of application see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 12, Sch 4. As to the provision of forms and the validity of applications and notices given on forms not provided by the authority see regs 40, 41, cited in PARA 39 note 5. For the Welsh language equivalent see the Licensing Act 2003 (Welsh Language Forms) Order 2007, SI 2007/805.

6 As to the determination of the prescribed fee see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, reg 4(1)-(5), cited in PARA 53 note 16. This is subject to the exemptions set out in reg 9, cited in PARA 53 note 16. For additional provisions in transitional cases see reg 4(6)-(9) (amended by SI 2005/357).

7 Licensing Act 2003 s 34(2).

8 Licensing Act 2003 s 34(3).

9 Ie by the Licensing Act 2003 s 17(5): see PARA 53.

10 Ie applications under the Licensing Act 2003 s 17(5): see PARA 53.

11 Licensing Act 2003 s 34(5).

12 See the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, regs 25, 26(4), cited in PARA 53 notes 22-23.

13 Ie the notices referred to in the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 25: see PARA 53 note 22.

14 Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 26(3).

15 Ie an application within the Licensing Act 2003 s 37(1): see the text and notes 17-18.

16 The Licensing Act 2003 s 34 does not apply to such an application: s 34(4).

17 As to the meaning of 'supply of alcohol' see PARA 53 note 18.

18 Licensing Act 2003 s 37(1).

19 See note 4.

20 For the prescribed form of application see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 13, Sch 5. See also note 5.

21 At the date at which this volume states the law, the prescribed fee was £23: see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, Sch 6.

22 Licensing Act 2003 s 37(2).

23 For the prescribed form of consent see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 24(1), Sch 11 Pt A. See also note 5.

24 Licensing Act 2003 s 37(3).

25 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

26 As to the meaning of 'premises' see PARA 27 note 12.

27 As to the meaning of 'designated premises supervisor' see PARA 55 note 4.

28 Is whether the application is one to which the Licensing Act 2003 s 38 (see the text and notes 34-36) applies.

29 See the Licensing Act 2003 s 37(4). The person making the application must give to the chief officer of police, and to the designated premises supervisor, if any, a copy of the application together with its accompanying documents, if any, on the same day as the day on which the application is given to the relevant licensing authority: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 28(a).

30 As to the meaning of 'the crime prevention objective' see PARA 35.

31 Licensing Act 2003 s 37(5).

32 Is under the Licensing Act 2003 s 37(4).

33 Licensing Act 2003 s 37(6).

34 Is an application made in accordance with the Licensing Act 2003 s 37.

35 For this purpose 'the application period' means the period which (1) begins when the application is received by the relevant licensing authority; and (2) ends (a) if the application is granted, when the variation takes effect; (b) if the application is rejected, at the time the rejection is notified to the applicant; or (c) if the application is withdrawn before it is determined, at the time of the withdrawal: Licensing Act 2003 s 38(3).

36 Licensing Act 2003 s 38(1), (2).

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

69 Application to vary premises licence

TEXT AND NOTES--Licensing Act 2003 ss 41A-C (added by SI 2009/1772) provide a simplified procedure for a minor variation of a premises licence. The holder of a premises licence may apply to the relevant licensing authority for a variation of the licence under the following provisions instead of under Licensing Act 2003 s 34: Licensing Act 2003 s 41A(1). Such an application is subject to regulations made under the 2003 Act prescribing the form and manner of applications, the information and documents that must accompany them, the fee to be paid, and their advertisement: Licensing Act 2003 s 41A(2), (4). An application may not be made to vary a premises licence so as to (1) extend the period for which it has effect; (2) vary substantially the premises to which it relates; (3) specify an individual as the premises supervisor; (4) add the supply of alcohol as an activity authorised by the licence; (5) authorise (a) the supply of alcohol at any time between 11 pm and 7 am; or (b) an increase in the amount of time on any day during which alcohol may be sold by retail or supplied; or (6) include the alternative licence condition referred to in Licensing Act 2003 s 41D(3): Licensing Act 2003 s 41A(3).

In determining an application, the relevant licensing authority must consult such of the responsible authorities as it considers appropriate and take into account any relevant representations made by those authorities, or made by an interested party and received by the authority within 10 working days beginning on the initial day: Licensing Act 2003 s 41B(1), (2). 'Initial day' means the first working day after the day on which the authority receives the application; and 'relevant representations' means representations which are about the likely effect of the grant of the application on the promotion of the licensing objectives (see PARA 35): Licensing Act 2003 s 41B(10). If the authority considers that (i) the variation proposed in the application could not have an adverse effect on the promotion of any of the licensing objectives; or (ii) if more than one variation is proposed, none of them, whether considered separately or together could have such an effect, it must grant the application: Licensing Act 2003 s 41B(3). In any other case the authority must reject the application: Licensing Act 2003 s 41B(4). The authority must determine the application within a specified time (see Licensing Act 2003 s 41B(5)-(9)) and must give notice of its determination to the applicant (see Licensing Act 2003 s 41C).

Licensing Act 2003 s 41D (added by SI 2009/1724) provides for the variation of a premises licence relating to the supervision of alcohol sales in community premises. Where a management committee which holds a premises licence in respect of community premises makes an application under Licensing Act 2003 s 34 for variation of the licence so as to authorise the supply of alcohol, the application may include an application for the alternative licence condition to be included in the licence instead of the conditions in Licensing Act 2003 s 19(2), (3) (see PARA 57): Licensing Act 2003 s 41D(1). 'The alternative licence condition' is the condition that every supply of alcohol under the premises licence must be made or authorised by the management committee: Licensing Act 2003 s 41D(3). For the meaning of 'management committee' and 'community premises' see PARA 53. A management committee which holds a premises licence in respect of community premises which includes the conditions in s 19(2), (3) may make an application under s 34 for (or which includes an application for) variation of the licence to include the alternative licence condition instead of those conditions: Licensing Act 2003 s 41D(2). Where an application under s 34 includes an application under s 41D(1), or is made pursuant to s 41D(2), provision is made for the modification of s 19 (as it applies by virtue of s 35(7)) and s 35 (see PARA 70): see Licensing Act 2003 s 41D(4)-(6).

NOTE 3--SI 2005/42 reg 27 substituted, reg 27A added: see PARA 53.

NOTE 5--SI 2005/42 reg 12 substituted, Sch 4A (application for the mandatory alcohol condition under the Licensing Act 2003 requiring a designated premises supervisor in

respect of a premises licence to be disappplied) and SI 2005/42 Sch 4B (application for a minor variation to a premises licence or club premises certificate under the Licensing Act 2003) added: SI 2009/1809.

TEXT AND NOTES 9-11--Reference to the duty to make regulations imposed on the Secretary of State by Licensing Act 2003 s 17(5) replaced by reference to the functions of the Secretary of State under Licensing Act 2003 s 17(5), (6): Licensing Act 2003 s 34(5) (substituted by SI 2009/2999).

NOTE 20--As to the prescribed form of application for the variation of premises solely to include the alternative licence condition and the prescribed form of application for minor variation of premises licence, see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42 regs 13A, 13B (added by SI 2009/1809).

NOTE 21--SI 2005/79 Sch 6 amended: SI 2009/1809.

TEXT AND NOTES 25-29--Notice must now be given by (1) the relevant licensing authority, in a case where the holder of the premises licence submitted the application to the relevant licensing authority by means of a relevant electronic facility; or (2) the holder of the premises licence, in any other case: Licensing Act 2003 s 37(4), (4A) (s 37(4) amended, s 37(4A), (4B) added by SI 2009/2999). For the meaning of 'relevant electronic facility' see PARA 53. Notice to the designated premises supervisor must be given by the holder of the premises licence: Licensing Act 2003 s 37(4B).

NOTE 29--SI 2005/42 reg 28 substituted by SI 2009/1809 and amended by SI 2009/3159.

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70. Determination of application to vary licence.

Where the relevant licensing authority¹ receives an application² to vary a premises licence³, and it is satisfied that the applicant has complied with any requirement imposed on him⁴ to advertise the application, then unless relevant representations⁵ are made⁶, the authority must grant the application⁷; but a licence may not be varied so as to extend the period for which it has effect or to vary substantially the premises⁸ to which it relates⁹.

Where relevant representations are made, the authority must:

- 291 (1) hold a hearing¹⁰ to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary; and
- 292 (2) having regard to the representations, take such of the following steps, if any, as it considers necessary for the promotion of the licensing objectives¹¹, namely steps:
 - 15 25. (a) to modify the conditions of the licence¹²;
 - 26. (b) to reject the whole or part of the application¹³.
 - 16

In discharging its duty to grant the application or to take any steps under head (2) above, a licensing authority may vary a premises licence so that it has effect subject to different conditions in respect of different parts of the premises concerned or different licensable activities¹⁴. Certain mandatory conditions¹⁵ must be included in the licence¹⁶.

Where an application, or any part of an application, is granted under the above provisions, the relevant licensing authority must forthwith give a notice to that effect to the applicant, to any person who made relevant representations in respect of the application¹⁷, and to the chief officer of police¹⁸ for the police area, or each police area, in which the premises are situated¹⁹. The notice must specify the time when the variation in question takes effect; and that time is the time specified in the application or, if that time is before the applicant is given that notice, such later time as the relevant licensing authority specifies in the notice²⁰. Where an application, or any part of an application, is rejected, the relevant licensing authority must forthwith give a notice to that effect stating its reasons for rejecting the application to the applicant, to any person who made relevant representations in respect of the application, and to the chief officer of police for the police area, or each police area, in which the premises are situated²¹.

Different statutory provisions apply to an application²² to vary a premises licence so as to specify a new premises supervisor ('the proposed individual'). Where such an application is made, then unless a notice is given by the chief officer of police²³ and not withdrawn, the relevant licensing authority must grant the application²⁴. Where such a notice is given and not withdrawn, the authority must:

- 293 (i) hold a hearing²⁵ to consider it, unless the authority, the applicant and the chief officer of police who gave the notice agree that a hearing is unnecessary; and

- 294 (ii) having regard to the notice, reject the application if it considers it necessary for the promotion of the crime prevention objective²⁶ to do so²⁷.

Where such an application is granted or rejected, the relevant licensing authority must give a notice to that effect to the applicant, to the proposed individual, and to the chief officer of police for the police area, or each police area, in which the premises are situated²⁸; and where a chief officer of police gave a notice²⁹ and it was not withdrawn, the notice of the authority's decision must state the authority's reasons for granting or rejecting the application³⁰. Where the application is granted, the notice of the authority's decision must specify the time when the variation takes effect; and that time is the time specified in the application or, if that time is before the applicant is given that notice, such later time as the relevant licensing authority specifies in the notice³¹. Where the holder of a premises licence is so notified of the authority's decision, he must forthwith:

- 295 (A) if his application has been granted, notify the person, if any, who has been replaced as the designated premises supervisor³² of the variation; and
 296 (B) if his application has been rejected, give the designated premises supervisor, if any, notice to that effect³³.

A person commits an offence if he fails, without reasonable excuse, to comply with heads (A) and (B) above³⁴.

1 As to the meaning of 'relevant licensing authority' see PARA 53 note 13; and as to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

2 I.e an application made in accordance with the Licensing Act 2003 s 34: see PARA 69. As to applications made in accordance with s 37 see the text and notes 22-34.

3 As to the meaning of 'premises licence' see PARA 53 note 1.

4 I.e any requirement imposed on him by virtue of the Licensing Act 2003 s 34(5): see PARA 69.

5 For these purposes, 'relevant representations' means representations which (1) are about the likely effect of the grant of the application on the promotion of the licensing objectives; and (2) meet the requirements of the Licensing Act 2003 s 35(6): s 35(5). The requirements are: (a) that the representations are made by an interested party or responsible authority within the period prescribed under s 17(5)(c) by virtue of s 34(5); (b) that they have not been withdrawn; and (c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious: s 35(6). Where the relevant licensing authority determines for the purposes of s 35(6)(c) (see head (c) above) that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for that determination: s 36(5). As to the notification see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 31, cited in PARA 55 note 4. As to the meaning of 'interested party' and 'responsible authority' see PARA 53 notes 24, 26; and as to the licensing objectives see PARA 35.

6 I.e subject to the Licensing Act 2003 s 35(3): see heads (1)-(2) in the text.

7 Licensing Act 2003 s 35(1), (2).

8 As to the meaning of 'premises' see PARA 27 note 12.

9 Licensing Act 2003 s 36(6).

10 Notice of the hearing must be given to the holder of the premises licence who has made the application under the Licensing Act 2003 s 34(1), and the notice must be accompanied by the relevant representations which have been made: Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 7, Sch 3, Table para 3. Notice must also be given to the persons who have made relevant representations: reg 6, Sch 2, Table para 3. The hearing must be held within 20 working days beginning with the day after the end of the period during

which representations may be made as prescribed under the Licensing Act 2003 s 17(5)(c) by virtue of s 34(5) (see PARA 69): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 5, Sch 1, Table para 3. As to the meaning of 'working day' see PARA 44 note 10; and as to the procedure at the hearing, or when a hearing is dispensed with, see PARA 44 et seq.

11 Licensing Act 2003 s 35(3).

12 For this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added: Licensing Act 2003 s 35(4).

13 Licensing Act 2003 s 35(4). Where an authority has a 'cumulative impact policy' that new applications in an area will normally be refused, it is entitled to apply that policy to refuse to vary an existing licence to extend the opening hours of the premises concerned: see *R (on the application of JD Wetherspoon plc) v Guildford Borough Council* [2006] EWHC 815 (Admin), [2007] 1 All ER 400, [2006] LGR 767.

14 Licensing Act 2003 s 36(7). As to licensable activities see PARA 28.

15 In the conditions required by the Licensing Act 2003 ss 19-21: see PARA 57.

16 See the Licensing Act 2003 s 35(7).

17 Where relevant representations were made in respect of the application, the notice under the Licensing Act 2003 s 36(1) must state the authority's reasons for its decision as to the steps (if any) to take under s 35(3) (b) (see head (2) in the text): s 36(2).

18 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

19 Licensing Act 2003 s 36(1).

20 Licensing Act 2003 s 36(3).

21 Licensing Act 2003 s 36(4).

22 In an application made in accordance with the Licensing Act 2003 s 37: see PARA 69.

23 In under the Licensing Act 2003 s 37(5): see PARA 69.

24 See the Licensing Act 2003 s 39(1), (2).

25 Notice of the hearing must be given to the holder of the premises licence who has made the application under the Licensing Act 2003 s 37(1) and to the proposed individual as referred to in s 37(1), and the notice must be accompanied by the notices which have been given under s 37(6) (see PARA 69): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 7, Sch 3, Table para 4. Notice must also be given to each chief officer of police who has given notice under the Licensing Act 2003 s 37(5): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 6, Sch 2, Table para 4. The hearing must be held within 20 working days beginning with the day after the end of the period within which a chief officer of police may give notice under the Licensing Act 2003 s 37(5) (see PARA 69): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 5, Sch 1, Table para 4. As to the procedure at the hearing, or when a hearing is dispensed with, see PARA 44 et seq.

26 As to the meaning of 'the crime prevention objective' see PARA 35.

27 Licensing Act 2003 s 39(3).

28 Licensing Act 2003 s 39(4).

29 See note 23.

30 Licensing Act 2003 s 39(5).

31 Licensing Act 2003 s 39(6).

32 As to the meaning of 'designated premises supervisor' see PARA 55 note 4.

33 Licensing Act 2003 s 40(1).

34 Licensing Act 2003 s 40(2). A person guilty of an offence under s 40(2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 40(3). As to the standard scale see PARA 17 note 21.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

70 Determination of application to vary licence

TEXT AND NOTES--As to the determination of applications under the simplified procedure for a minor variation of a premises licence see PARA 69.

NOTE 6--A licensing authority has no discretion to consider or act on late representations in respect of an application to vary a premises licence: *R (on the application of Albert Court Residents' Association) v Westminster City Council* [2010] EWHC 393 (Admin), [2010] 20 EG 146, [2010] All ER (D) 14 (Mar).

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71. Appeals with regard to variation of premises licences.

Where a licensing authority¹ rejects, in whole or in part, an application to vary a premises licence², or rejects an application to vary a premises licence to specify an individual as the premises supervisor³, the applicant may appeal⁴ against the decision⁵.

Where an application to vary a premises licence is granted⁶, in whole or in part:

- 297 (1) the applicant may appeal against any decision to modify⁷ the conditions of the licence⁸; and
- 298 (2) where a person who made relevant representations⁹ in relation to the application desires to contend that any variation made ought not to have been made, or that, when varying the licence, the licensing authority ought not to have modified¹⁰ the conditions of the licence, or ought to have modified them in a different way, he may appeal against the decision¹¹.

Where an application to vary a premises licence is granted¹² in a case where a chief officer of police¹³ gave a notice¹⁴ which was not withdrawn, the chief officer of police may appeal against the decision to grant the application¹⁵.

On any such appeal it is not appropriate for the magistrates' court to examine whether a proposed variation in a licence requires planning consent or to speculate whether, if it does, such consent will be forthcoming, since that is a planning matter falling exclusively within the competence of the planning authority¹⁶.

1 As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

2 Ie an application under the Licensing Act 2003 s 35: see PARA 70. As to the meaning of 'premises licence' see PARA 53 note 1.

3 Ie an application under the Licensing Act 2003 s 39: see PARA 70.

4 Ie to a magistrates' court: see PARA 52.

5 See the Licensing Act 2003 Sch 5 para 1(b), (c). As to the procedure for bringing the appeal, and the powers of the magistrates' court which hears it, see PARA 52.

6 Ie under the Licensing Act 2003 s 35: see PARA 70.

7 Ie under the Licensing Act 2003 s 35(4)(a): see PARA 70.

8 Licensing Act 2003 Sch 5 para 4(1), (2).

9 As to the meaning of 'relevant representations' see PARA 70 note 5 (definition applied by the Licensing Act 2003 Sch 5 para 4(4)).

10 See note 7.

11 Licensing Act 2003 Sch 5 para 4(3). On such an appeal the holder of the premises licence is to be the respondent in addition to the licensing authority: Sch 5 para 9(3). As to the procedure for bringing the appeal, and the powers of the magistrates' court which hears it, see PARA 52.

12 le under the Licensing Act 2003 s 39: see PARA 70.

13 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

14 le under the Licensing Act 2003 s 37(5): see PARA 69.

15 Licensing Act 2003 Sch 5 para 5(2). On such an appeal the holder of the premises licence is to be the respondent in addition to the licensing authority: Sch 5 para 9(3). As to the procedure for bringing the appeal, and the powers of the magistrates' court which hears it, see PARA 52.

16 *R (on the application of Blackwood) v Birmingham Magistrates and Birmingham City Council (Mitchells and Butler Leisure Retail Ltd interested party)* [2006] EWHC 1800 (Admin), (2006) 170 JP 613, [2006] All ER (D) 324 (Jun).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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72. Request to be removed as designated premises supervisor.

Where an individual wishes to cease being the designated premises supervisor¹ in respect of a premises licence², he may give the relevant licensing authority³ a notice to that effect⁴. Where the individual is the holder of the premises licence, the notice must be accompanied by the premises licence, or the appropriate part of the licence, or, if that is not practicable, by a statement of the reasons for the failure to provide the licence or part⁵. In any other case, the individual must no later than 48 hours after giving the notice give the holder of the premises licence:

- 299 (1) a copy of that notice; and
- 300 (2) a notice directing the holder to send to the relevant licensing authority within 14 days of receiving the notice either the premises licence or the appropriate part of the licence, or, if that is not practicable, a statement of the reasons for the failure to provide the licence or part⁶.

A person commits an offence if he fails, without reasonable excuse, to comply with a direction given to him under head (2) above⁷.

Where an individual gives the relevant licensing authority a notice in accordance with the above provisions, and satisfies the applicable requirements⁸, he is to be treated for the purposes of the Licensing Act 2003 as if, from the relevant time⁹, he were not the designated premises supervisor¹⁰.

1 As to the meaning of 'designated premises supervisor' see PARA 55 note 4.

2 As to the meaning of 'premises licence' see PARA 53 note 1.

3 As to the meaning of 'relevant licensing authority' see PARA 53 note 13; and as to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

4 Licensing Act 2003 s 41(1). Section 41(1) is subject to regulations made by the Secretary of State under s 54 (form etc of notices etc: see PARA 53 note 14): s 41(2). As to the method of giving notices generally see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 21, cited in PARA 53 note 15. See also the Licensing Act 2003 s 184; and PARA 39 text and notes 11-14.

5 Licensing Act 2003 s 41(3).

6 Licensing Act 2003 s 41(4).

7 Licensing Act 2003 s 41(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 41(6). As to the standard scale see PARA 17 note 21.

8 Ie the requirements of the Licensing Act 2003 s 41(3) or s 41(4): see the text and notes 5-6.

9 For this purpose 'the relevant time' means: (1) the time the notice under the Licensing Act 2003 s 41(1) is received by the relevant licensing authority; or (2) if later, the time specified in the notice: s 41(8).

10 Licensing Act 2003 s 41(7).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(vi) Transfer of Premises Licence

73. Application for transfer of premises licence.

Any person who may apply for a premises licence¹ may apply to the relevant licensing authority² for the transfer of a premises licence to him³. This is subject to regulations made by the Secretary of State⁴ as to the form of applications⁵ and fees⁶ to accompany applications⁷. Such an application must also be accompanied by the premises licence or, if that is not practicable, a statement of the reasons for the failure to provide the licence⁸.

The applicant must give notice of his application to the chief officer of police⁹ for the police area, or each police area, in which the premises¹⁰ are situated¹¹. Where a chief officer of police so notified is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective¹², he must give the relevant licensing authority a notice stating the reasons why he is so satisfied¹³, within the period of 14 days beginning with the day on which he is notified of the application¹⁴.

Where an application made in accordance with the above provisions includes a request that the transfer have immediate effect¹⁵, and the statutory requirements¹⁶ are met, then the premises licence has effect during the application period¹⁷ as if the applicant were the holder of the licence¹⁸. In such a case, where there is a designated premises supervisor¹⁹ and the applicant and that supervisor are not the same person, the applicant must forthwith notify the designated premises supervisor of the application²⁰; and a person commits an offence if he fails, without reasonable excuse, to comply with that requirement²¹.

1 Ie any person mentioned in the Licensing Act 2003 s 16(1): see PARA 53. Where the applicant is an individual he must be aged 18 or over: s 42(2).

2 As to the meaning of 'relevant licensing authority' see PARA 53 note 13; and as to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 Licensing Act 2003 s 42(1).

4 Ie under the Licensing Act 2003 ss 54, 55: see PARA 53 note 14. As to the Secretary of State see PARA 2.

5 For the prescribed form of application see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 14, Sch 6. As to the provision of forms and the validity of applications and notices given on forms not provided by the authority see regs 40, 41, cited in PARA 39 note 5. For the Welsh language equivalent see the Licensing Act 2003 (Welsh Language Forms) Order 2007, SI 2007/805.

6 At the date at which this volume states the law, the prescribed fee was £23: see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, Sch 6.

7 Licensing Act 2003 s 42(3).

8 Licensing Act 2003 s 42(4).

9 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

10 As to the meaning of 'premises' see PARA 27 note 12.

11 Licensing Act 2003 s 42(5). The person making the application must give to the chief officer of police a copy of the application together with its accompanying documents, if any, on the same day as the day on which the application is given to the relevant licensing authority: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 28(b).

12 As to the meaning of 'the crime prevention objective' see PARA 35.

13 Licensing Act 2003 s 42(6).

14 Licensing Act 2003 s 42(7).

15 Subject to the Licensing Act 2003 s 43(4), (5), an application including such a request may be made only with the consent of the holder of the premises licence: s 43(3). For the prescribed form of consent see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 24(2), Sch 11 Pt B. As to the provision of forms and the validity of applications and notices given on forms not provided by the authority see regs 40, 41, cited in PARA 39 note 5. For the Welsh language equivalent see the Licensing Act 2003 (Welsh Language Forms) Order 2007, SI 2007/805. Where, however, a person is the holder of the premises licence by virtue of an interim authority notice under the Licensing Act 2003 s 47 (see PARA 76), such an application may also be made by that person: s 43(4). Furthermore, the relevant licensing authority must exempt the applicant from the requirement to obtain the holder's consent if the applicant shows to the authority's satisfaction (1) that he has taken all reasonable steps to obtain that consent; and (2) that, if the application were one to which s 43(1) applied, he would be in a position to use the premises during the application period for the licensable activity or activities authorised by the premises licence: s 43(5). Where the relevant licensing authority refuses to exempt an applicant under s 43(5), it must notify the applicant of its reasons for that decision: s 43(6). As to licensable activities see PARA 28.

16 As to the requirements of the Licensing Act 2003 s 43: see note 15.

17 For this purpose 'the application period' means the period which (1) begins when the application is received by the relevant licensing authority; and (2) ends (a) when the licence is transferred following the grant of the application; or (b) if the application is rejected, when the applicant is notified of the rejection; or (c) when the application is withdrawn: Licensing Act 2003 s 43(2).

18 Licensing Act 2003 s 43(1).

19 As to the meaning of 'designated premises supervisor' see PARA 55 note 4.

20 Licensing Act 2003 s 46(1), (2).

21 Licensing Act 2003 s 46(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 46(5). As to the standard scale see PARA 17 note 21.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

73 Application for transfer of premises licence

TEXT AND NOTE 11--The words 'The applicant must give notice of his application' replaced by 'The relevant person must give notice of the application': Licensing Act 2003 s 42(5) (s 42(5) amended, s 42(5A) added by SI 2009/2999). 'Relevant person' means (1) the relevant licensing authority, in a case where the applicant submitted the application to

the authority by means of a relevant electronic facility; or (2) the applicant, in any other case: Licensing Act 2003 s 42(5A). For the meaning of 'relevant electronic facility' see PARA 53. SI 2005/42 reg 28 amended: see PARA 69.

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74. Determination of transfer application and rights of appeal.

Where an application for the transfer of a premises licence¹ is made², then if none of the conditions set out in heads (1) to (3) below applies, the relevant licensing authority³ must reject the application⁴. Those conditions are:

- 301 (1) that the application includes a request that the transfer have immediate effect⁵;
- 302 (2) that the holder of the premises licence consents to the transfer⁶;
- 303 (3) that the applicant is exempted⁷ from the requirement to obtain the holder's consent to the transfer⁸.

Subject to that, and unless a notice is given⁹ by a chief officer of police¹⁰ and not withdrawn, the authority must transfer the licence in accordance with the application¹¹.

Where a notice is given by a chief officer of police and not withdrawn, and the authority is not obliged to reject the application¹², then the authority must:

- 304 (a) hold a hearing¹³ to consider it, unless the authority, the applicant and the chief officer of police who gave the notice agree that a hearing is unnecessary; and
- 305 (b) having regard to the notice, reject the application if it considers it necessary for the promotion of the crime prevention objective¹⁴ to do so¹⁵.

Where an application for the transfer of a premises licence¹⁶ is granted or rejected, the relevant licensing authority must give a notice to that effect to the applicant, and to the chief officer of police for the police area, or each police area, in which the premises¹⁷ are situated¹⁸. The relevant licensing authority must also give a copy of the notice so given:

- 306 (i) where the application is granted, to the holder of the licence immediately before the application was granted, or, if the application was one which included a request that the transfer have immediate effect¹⁹, to the holder of the licence immediately before the application was made, if any;
- 307 (ii) where the application is rejected, to the holder of the premises licence, if any²⁰.

Where a chief officer of police gave a notice²¹ and it was not withdrawn, the notice of the authority's decision must state the licensing authority's reasons for granting or rejecting the application²².

Where the application is granted, the notice of the authority's decision must specify the time when the transfer takes effect; and that time is the time specified in the application or, if that time is before the applicant is given that notice, such later time as the relevant licensing authority specifies in the notice²³.

Where an application is made²⁴ to transfer a premises licence in respect of which there is a designated premises supervisor²⁵, and the applicant and that supervisor are not the same person, then if the application is granted, the applicant must forthwith notify the designated

premises supervisor of the transfer²⁶; and a person commits an offence if he fails, without reasonable excuse, to comply with this requirement²⁷.

Where a licensing authority rejects an application to transfer a premises licence, the applicant may appeal²⁸ against the decision²⁹; and where an application to transfer a premises licence is granted in a case where a chief officer of police gave a notice³⁰ which was not withdrawn, the chief officer of police may appeal against the decision to grant the application³¹.

1 As to the meaning of 'premises licence' see PARA 53 note 1.

2 Ie in accordance with the Licensing Act 2003 s 42: see PARA 73.

3 As to the meaning of 'relevant licensing authority' see PARA 53 note 13; and as to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

4 Licensing Act 2003 s 44(1), (3).

5 Ie that the Licensing Act 2003 s 43(1) (applications given interim effect) applies to the application: see PARA 73.

6 For the prescribed form of consent see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 24(2), Sch 11 Pt B. As to the provision of forms and the validity of applications and notices given on forms not provided by the authority see regs 40, 41, cited in PARA 39 note 5. For the Welsh language equivalent see the Licensing Act 2003 (Welsh Language Forms) Order 2007, SI 2007/805.

7 Ie under the Licensing Act 2003 s 44(6). The relevant licensing authority must exempt the applicant from the requirement to obtain the holder's consent if the applicant shows to the authority's satisfaction (1) that he has taken all reasonable steps to obtain that consent; and (2) that, if the application were granted, he would be in a position to use the premises for the licensable activity or activities authorised by the premises licence: s 44(6). As to licensable activities see PARA 28. Where the relevant licensing authority refuses to exempt an applicant under s 44(6), it must notify the applicant of its reasons for that decision: s 44(7).

8 Licensing Act 2003 s 44(4).

9 Ie under the Licensing Act 2003 s 42(6): see PARA 73.

10 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

11 See the Licensing Act 2003 s 44(2).

12 Ie where the Licensing Act 2003 s 44(3) does not apply.

13 Notice of the hearing must be given to person who has made the application under the Licensing Act 2003 s 42(1) and to the holder of the premises licence in respect of which the application has been made or, if the application is one to which s 43(1) applies, the holder of that licence immediately before the application was made; and the notice must be accompanied by the notices which have been given under s 42(6) (see PARA 73): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 7, Sch 3, Table para 5. Notice must also be given to each chief officer of police who has given notice under the Licensing Act 2003 s 42(6): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 6, Sch 2, Table para 5.

The hearing must be held within 20 working days beginning with the day after the end of the period within which a chief officer of police may give notice under the Licensing Act 2003 s 42(6) (see PARA 73): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 5, Sch 1, Table, para 5. As to the meaning of 'working day' see PARA 44 note 10; and as to the procedure at the hearing, or when a hearing is dispensed with, see PARA 44 et seq.

14 As to the meaning of 'the crime prevention objective' see PARA 35.

15 Licensing Act 2003 s 44(5).

16 Ie an application under the Licensing Act 2003 s 42: see PARA 73.

17 As to the meaning of 'premises' see PARA 27 note 12.

18 Licensing Act 2003 s 45(1).

19 Ie if the application was one to which the Licensing Act 2003 s 43(1) applied: see PARA 73.

20 Licensing Act 2003 s 45(4).

21 See note 9.

22 See the Licensing Act 2003 s 45(2).

23 See the Licensing Act 2003 s 45(3).

24 Ie under the Licensing Act 2003 s 42: see PARA 73.

25 As to the meaning of 'designated premises supervisor' see PARA 55 note 4.

26 Licensing Act 2003 s 46(1), (3).

27 Licensing Act 2003 s 46(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 46(5). As to the standard scale see PARA 17 note 21.

28 Ie to a magistrates' court: see PARA 52.

29 See the Licensing Act 2003 Sch 5 para 1(d). As to the procedure for bringing the appeal, and the powers of the magistrates' court which hears it, see PARA 52.

30 See note 9.

31 Licensing Act 2003 Sch 5 para 6(1), (2). On such an appeal, the holder of the premises licence is to be the respondent in addition to the licensing authority: Sch 5 para 6(3).

As to the procedure for bringing the appeal, and the powers of the magistrates' court which hears it, see PARA 52.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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75. Transfer following death etc of licence holder.

Where:

- 308 (1) a premises licence¹ lapses by virtue of the death, incapacity or insolvency of the holder, or for related reasons², but no interim authority notice³ has effect⁴; or
 309 (2) a premises licence lapses by virtue of surrender⁵,

then notwithstanding the lapsing of the licence, a person who may apply for a premises licence⁶ may apply⁷ for the transfer of the licence to him provided that the application is made no later than seven days after the day the licence lapsed, and that it includes a request⁸ that the transfer have immediate effect⁹.

Where such an application is made, the premises licence is reinstated from the time the application is received by the relevant licensing authority¹⁰; but the licence lapses again if, and when, the applicant is notified of the rejection of the application, or the application is withdrawn¹¹.

Only one application for transfer of the premises licence may be made in reliance on the above provisions¹².

1 As to the meaning of 'premises licence' see PARA 53 note 1.

2 Ie lapses by virtue of the Licensing Act 2003 s 27: see PARA 60.

3 As to interim authority notices see PARA 76.

4 For these purposes, an interim authority notice ceases to have effect when it is cancelled under the Licensing Act 2003 s 48 (see PARA 77) or withdrawn: s 50(2).

5 Ie lapses by virtue of the Licensing Act 2003 s 28: see PARA 61.

6 Ie a person mentioned in the Licensing Act 2003 s 16(1) (see PARA 53) who, in the case of an individual, is aged 18 or over: Licensing Act 2003 s 50(3).

7 Ie under the Licensing Act 2003 s 42: see PARA 73.

8 Ie the application is one to which the Licensing Act 2003 s 43(1)(a) applies: see PARA 73.

9 Licensing Act 2003 s 50(1), (3). Where an application is made in accordance with s 50(3), s 43(1)(b) (see PARA 73) must be disregarded: s 50(4).

10 Licensing Act 2003 s 50(5). As to the meaning of 'relevant licensing authority' see PARA 53 note 13; and as to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

11 Licensing Act 2003 s 50(6).

12 Licensing Act 2003 s 50(7).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(vii) Interim Authority Notices

76. Interim authority notice following death etc of licence holder.

Where a premises licence¹ lapses by reason of the death, incapacity or insolvency of the holder², but no application for transfer of the licence has been made³, then a person who has a prescribed interest⁴ in the premises⁵ concerned, or who is connected to the person who held the premises licence immediately before it lapsed ('the former holder')⁶, may, during the initial seven day period⁷, give to the relevant licensing authority⁸ a notice (an 'interim authority notice') in respect of the licence⁹. This is subject to regulations made by the Secretary of State¹⁰ as to the form of applications¹¹ and fees¹² to accompany applications¹³; and only one interim authority notice may be so given¹⁴.

Where an interim authority notice is given in accordance with the above provisions, the premises licence is reinstated from the time the notice is received by the relevant licensing authority, and the person who gave the notice is from that time the holder of the licence¹⁵. On receipt of an interim authority notice, the relevant licensing authority must issue to the person who gave the notice a copy of the licence and a copy of the summary, in each case certified by the authority to be a true copy¹⁶. The copies so issued must be copies of the premises licence and summary in the form in which they existed immediately before the licence lapsed¹⁷, except that they must specify the person who gave the interim authority notice as the person who is the holder¹⁸.

Where a person becomes the holder of a premises licence by the above provisions, he must, unless he is the designated premises supervisor¹⁹ under the licence, forthwith notify the supervisor, if any, of the interim authority notice²⁰; and a person commits an offence if he fails, without reasonable excuse, to comply with this requirement²¹.

The premises licence lapses again:

- 310 (1) at the end of the initial seven day period unless before that time the person who gave the interim authority notice has given a copy of the notice to the chief officer of police²² for the police area, or each police area, in which the premises are situated;
- 311 (2) at the end of the interim authority period²³, unless before that time a relevant transfer application²⁴ is made to the relevant licensing authority²⁵.

Nothing in these provisions prevents the person who gave the interim authority notice from making a relevant transfer application²⁶.

If a relevant transfer application is made during the interim authority period, and that application is rejected or withdrawn, then the licence lapses again at the time of the rejection or withdrawal²⁷.

1 As to the meaning of 'premises licence' see PARA 53 note 1.

2 ie in a case within the Licensing Act 2003 s 27(1)(a), (b) or (c): see PARA 60.

3 le under the Licensing Act 2003 s 50: see PARA 75.

4 'Prescribed' means prescribed by regulations made by the Secretary of State: Licensing Act 2003 s 193. As to the Secretary of State see PARA 2.

5 As to the meaning of 'premises' see PARA 27 note 1.

6 For these purposes, a person is connected to the former holder of the premises licence if, and only if (1) the former holder has died and that person is his personal representative; (2) the former holder lacks capacity (within the meaning of the Mental Capacity Act 2005) to hold the licence and that person acts for him under an enduring power of attorney or lasting power of attorney registered under that Act (see **AGENCY** vol 1 (2008) PARA 194 et seq); or (3) the former holder has become insolvent and that person is his insolvency practitioner: Licensing Act 2003 s 47(5) (amended by the Mental Capacity Act 2005 s 67(1), Sch 6 para 46(1), (3)(a)). 'Becomes insolvent' is to be construed in accordance with the Licensing Act 2003 s 27 (see PARA 62 note 3); and 'insolvency practitioner', in relation to a person, means a person acting as an insolvency practitioner in relation to him (within the meaning of the Insolvency Act 1986 s 388 (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 43): Licensing Act 2003 s 47(10).

7 'Initial seven day period', in relation to a licence which lapses as mentioned in the Licensing Act 2003 s 47(1), means the period of seven days beginning with the day after the day the licence lapses: s 47(10).

8 As to the meaning of 'relevant licensing authority' see PARA 53 note 13.

9 Licensing Act 2003 s 47(1), (2).

10 le regulations under the Licensing Act 2003 ss 54, 55: see PARA 53 note 14. As to the Secretary of State see PARA 2.

11 For the prescribed form of application see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 15, Sch 7. As to the provision of forms and the validity of applications and notices given on forms not provided by the authority see regs 40, 41, cited in PARA 39 note 5. For the Welsh language equivalent see the Licensing Act 2003 (Welsh Language Forms) Order 2007, SI 2007/805.

12 At the date at which this volume states the law, the prescribed fee was £23: see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, Sch 6.

13 Licensing Act 2003 s 47(3).

14 Licensing Act 2003 s 47(4).

15 Licensing Act 2003 s 47(6).

16 Licensing Act 2003 s 49(1).

17 le before the licence lapsed under the Licensing Act 2003 s 27.

18 Licensing Act 2003 s 49(2). The Licensing Act 2003 applies in relation to a copy issued under s 49 as it applies in relation to an original licence or summary: s 49(3).

19 As to the meaning of 'designated premises supervisor' see PARA 55 note 4.

20 Licensing Act 2003 s 49(4).

21 Licensing Act 2003 s 49(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 49(6). As to the standard scale see PARA 17 note 21.

22 The person giving the notice must give to the chief officer of police a copy of the interim authority notice together with its accompanying documents, if any, on the same day as the day on which the application or notice is given to the relevant licensing authority: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 28(b). As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

23 'Interim authority period' means the period beginning with the day on which the interim authority notice is received by the relevant licensing authority and ending (1) two months after that day; or (2) if earlier, when it is terminated by the person who gave the interim authority notice notifying the relevant licensing authority to that effect: Licensing Act 2003 s 47(10).

24 'Relevant transfer application' in relation to the premises licence, is an application under the Licensing Act 2003 s 42 which is given interim effect by virtue of s 43 (see PARA 73): s 47(10).

25 Licensing Act 2003 s 47(7).

26 Licensing Act 2003 s 47(8).

27 Licensing Act 2003 s 47(9).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

76 Interim authority notice following death etc of licence holder

NOTE 22--SI 2005/42 reg 28 amended: see PARA 69.

NOTE 25--Where the interim authority notice was given to the relevant licensing authority by means of a relevant electronic facility, head (1) does not apply and the relevant licensing authority must forthwith give a copy of the notice to the chief officer of police for the police area (or each police area) in which the premises are situated: Licensing Act 2003 s 47(7A) (added by SI 2009/2999). For the meaning of 'relevant electronic facility' see PARA 53.

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77. Cancellation of interim authority notice following police objections.

Where:

- 312 (1) an interim authority notice¹ by a person ('the relevant person') is given in accordance with the relevant statutory provisions²;
- 313 (2) the chief officer of police³ for the police area, or each police area, in which the premises⁴ are situated is given a copy of the interim authority notice before the end of the initial seven day period⁵; and
- 314 (3) that chief officer, or any of those chief officers, is satisfied that the exceptional circumstances of the case are such that a failure to cancel the interim authority notice would undermine the crime prevention objective⁶,

then the chief officer of police must no later than 48 hours after he receives the copy of the interim authority notice give the relevant licensing authority⁷ a notice stating why he is so satisfied⁸. Where a notice is given by the chief officer of police, and not withdrawn, the authority must:

- 315 (a) hold a hearing⁹ to consider it, unless the authority, the relevant person and the chief officer of police agree that a hearing is unnecessary; and
- 316 (b) having regard to the notice given by the chief officer of police, cancel the interim authority notice¹⁰ if it considers it necessary for the promotion of the crime prevention objective to do so¹¹.

The relevant licensing authority may not, however, cancel an interim authority notice after a relevant transfer application¹² is made in respect of the premises licence¹³.

The premises licence lapses if, and when, a notice of cancellation¹⁴ is given¹⁵. It may, however, be reinstated on appeal¹⁶.

1 As to the meaning of 'interim authority notice' see PARA 76.

2 ie in accordance with the Licensing Act 2003 s 47: see PARA 76.

3 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

4 As to the meaning of 'premises' see PARA 27 note 12.

5 As to the meaning of 'the initial seven day period' see PARA 76 note 7 (definition applied by the Licensing Act 2003 s 48(1)(b)).

6 As to the meaning of 'the crime prevention objective' see PARA 35.

7 As to the meaning of 'relevant licensing authority' see PARA 53 note 13; and as to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

8 Licensing Act 2003 s 48(1), (2).

9 Notice of the hearing must be given to person who has given the notice under the Licensing Act 2003 s 47(2); and the notice must be accompanied by the notices which have been given under s 48(2): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 7, Sch 3, Table para 6. Notice must also be given to each chief officer of police who has given notice under the Licensing Act 2003 s 48(2): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 6, Sch 2, Table para 6. The notice must be given no later than two working days before the day or the first day on which the hearing is to be held: reg 6(2)(a). The hearing must be held within five working days beginning with the day after the end of the period within which a chief officer of police may give notice under the Licensing Act 2003 s 48(2): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 5, Sch 1, Table para 6. A party to the hearing must give to the authority, no later than one working day before the day or the first day on which the hearing is to be held, a notice stating whether he intends to attend or be represented at the hearing, and whether he considers a hearing to be unnecessary: reg 8(1), (3) (a). As to the meaning of 'working day' see PARA 44 note 10; and as to the procedure at the hearing, or when a hearing is dispensed with, see PARA 44 et seq.

10 An interim authority notice is cancelled under the Licensing Act 2003 s 48(3)(b) (see head (b) in the text) by the licensing authority giving the relevant person a notice stating that it is cancelled and the authority's reasons for its decision: s 48(4). The licensing authority must give a copy of a notice under s 48(4) to the chief officer of police for the police area, or each police area, in which the premises are situated: s 48(5).

11 Licensing Act 2003 s 48(3).

12 As to the meaning of 'relevant transfer application' see PARA 76 note 24 (definition applied by the Licensing Act 2003 s 48(7)).

13 Licensing Act 2003 s 48(7).

14 The notice under the Licensing Act 2003 s 48(4): see note 10.

15 Licensing Act 2003 s 48(6).

16 See the Licensing Act 2003 Sch 5 para 7(5); and PARA 78.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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78. Appeals regarding interim authority notices.

The following provisions apply where an interim authority notice¹ is given², and a chief officer of police³ gives a notice⁴ which is not withdrawn⁵.

Where the relevant licensing authority⁶ decides to cancel the interim authority notice⁷, the person who gave the interim authority notice may appeal⁸ against that decision⁹. Where such an appeal is brought, the magistrates' court¹⁰ to which it is brought may, on such terms as it thinks fit, order the reinstatement of the interim authority notice pending the disposal of the appeal, or the expiry of the interim authority period¹¹, whichever first occurs¹². Where the court makes such an order, the premises licence¹³ is reinstated from the time the order is made¹⁴.

Where the relevant licensing authority decides not to cancel the interim authority notice¹⁵, the chief officer of police may appeal against that decision¹⁶. In such a case the person who gave the interim authority notice is to be the respondent in addition to the licensing authority¹⁷.

The court's powers on any such appeal have already been discussed¹⁸.

1 As to the meaning of 'interim authority notice' see PARA 76.

2 In accordance with the Licensing Act 2003 s 47: see PARA 76.

3 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

4 In under the Licensing Act 2003 s 48(2): see PARA 77.

5 Licensing Act 2003 Sch 5 para 7(1).

6 As to the meaning of 'relevant licensing authority' see PARA 53 note 13; and as to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

7 In under the Licensing Act 2003 s 48(3): see PARA 77.

8 As to the method of bringing the appeal see PARA 52.

9 Licensing Act 2003 Sch 5 para 7(2).

10 See PARA 52.

11 As to the meaning of 'interim authority period' see PARA 76 note 23 (definition applied by the Licensing Act 2003 Sch 5 para 7(6)).

12 Licensing Act 2003 Sch 5 para 7(4).

13 As to the meaning of 'premises licence' see PARA 53 note 1.

14 Licensing Act 2003 Sch 5 para 7(5). Section 47 (see PARA 76) has effect in a case where the appeal is dismissed or abandoned before the end of the interim authority period as if (1) the reference in s 47(7)(b) to the end of the interim authority period were a reference to the time when the appeal is dismissed or abandoned; and (2) the reference in s 47(9)(a) to the interim authority period were a reference to that period disregarding the part of it which falls after that time: Sch 5 para 7(5).

- 15 See note 7.
- 16 Licensing Act 2003 Sch 5 para 7(3).
- 17 Licensing Act 2003 Sch 5 para 9(4).
- 18 See PARA 52.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(viii) Review of Premises Licences

A. REVIEW; IN GENERAL

79. Application for review of licence.

Where a premises licence¹ has effect, an interested party² or a responsible authority³ may apply to the relevant licensing authority⁴ for a review of the licence⁵. Where a local authority⁶ is both the relevant licensing authority, and a responsible authority, in respect of any premises⁷, the authority may, in its capacity as a responsible authority, apply under these provisions for a review of any premises licence in respect of the premises⁸.

The application must be in the prescribed form⁹. The Secretary of State¹⁰ must by regulations:

- 317 (1) require the applicant to give a notice containing details of the application to the holder of the premises licence and each responsible authority within such period as may be prescribed¹¹;
- 318 (2) require the authority to advertise the application and invite representations about it to be made to the authority by interested parties and responsible authorities¹²;
- 319 (3) prescribe the period during which representations may be made by the holder of the premises licence, any responsible authority or any interested party¹³;
- 320 (4) require any notice under head (1) above or advertisement under head (2) above to specify that period¹⁴.

The relevant licensing authority may, at any time, reject any ground for review specified in such an application if it is satisfied:

- 321 (a) that the ground is not relevant to one or more of the licensing objectives¹⁵; or
- 322 (b) in the case of an application made by a person other than a responsible authority, that either the ground is frivolous or vexatious, or the ground is a repetition¹⁶.

Where the authority rejects a ground for review under head (b) above, it must notify the applicant of its decision and, if the ground was rejected because it was frivolous or vexatious, the authority must notify him of its reasons for making that decision¹⁷.

The application is to be treated as rejected to the extent that any of the grounds for review are rejected under head (a) or head (b) above¹⁸.

1 As to the meaning of 'premises licence' see PARA 53 note 1.

2 As to the meaning of 'interested party' see PARA 53 note 24.

3 As to the meaning of 'responsible authority' see PARA 53 note 26.

4 As to the meaning of 'relevant licensing authority' see PARA 53 note 13; and as to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State's duty to issue guidance under s 182 see PARA 2.

5 Licensing Act 2003 s 51(1).

6 'Local authority' is not defined for these purposes. As to local authorities generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq; **LONDON GOVERNMENT**. As to the local authorities that are licensing authorities see PARA 3.

7 As to the meaning of 'premises' see PARA 27 note 12.

8 Licensing Act 2003 s 53(1), (2).

9 See the Licensing Act 2003 s 51(2), which provides that s 51(1) is subject to regulations under s 54 (form etc of applications etc: see PARA 53 note 14). For the prescribed form of application see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 16, Sch 8. As to the provision of forms and the validity of applications and notices given on forms not provided by the authority see regs 40, 41, cited in PARA 39 note 5. For the Welsh language equivalent see the Licensing Act 2003 (Welsh Language Forms) Order 2007, SI 2007/805.

10 As to the Secretary of State see PARA 2.

11 Licensing Act 2003 s 51(3)(a). The person making the application must give notice of his application to each responsible authority and to the holder of the premises licence to which the application relates by giving to each authority and to the holder a copy of the application for review together with its accompanying documents, if any, on the same day as the day on which the application for review is given to the relevant licensing authority: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, regs 27, 29.

12 Licensing Act 2003 s 51(3)(b). Subject to the provisions of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, regs 38, 39, the relevant licensing authority must advertise an application for the review of a premises licence (1) by displaying prominently a notice (a) which is of a size equal or larger than A4, of a pale blue colour and printed legibly in black ink or typed in black in a font of a size equal to or larger than 16; (b) at, on or near the site of the premises to which the application relates where it can conveniently be read from the exterior of the premises by the public and in the case of a premises covering an area of more than 50 metres square, one further notice in the same form and subject to the same requirements must be displayed every 50 metres along the external perimeter of the premises abutting any highway; and (c) at the offices, or the main offices, of the licensing authority in a central and conspicuous place; and (2) in a case where the relevant licensing authority maintains a website for the purpose of advertisement of applications given to it, by publication of a notice on that website: reg 38(1) (reg 38(1) amended, and reg 38(2) substituted, by SI 2007/2502). These requirements must be fulfilled for a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 38(2) (b) (as so substituted). All such notices must state (i) the address of the premises about which an application for a review has been made; (ii) the dates between which interested parties and responsible authorities may make representations to the relevant licensing authority; (iii) the grounds of the application for review; (iv) the postal address and, where relevant, the worldwide web address where the register of the relevant licensing authority is kept and where and when the grounds for the review may be inspected; and (v) that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for the offence: reg 39. As to false statements see the Licensing Act 2003 s 158; and PARA 156.

13 Licensing Act 2003 s 51(3)(c). Such representations may be made at any time during a period of 28 consecutive days starting on the day after the day on which the application to which it relates was given to the authority by the applicant: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 22(1)(b).

14 Licensing Act 2003 s 51(3)(d); and see notes 12-13.

15 As to the licensing objectives see PARA 35.

16 Licensing Act 2003 s 51(4). For this purpose a ground for review is a repetition if (1) it is identical or substantially similar to (a) a ground for review specified in an earlier application for review made in respect of the same premises licence and determined under s 52 (see PARA 80); or (b) representations considered by the relevant licensing authority in accordance with s 18 (see PARA 55), before it determined the application for the

premises licence under s 18; or (c) representations which would have been so considered but for the fact that they were excluded representations by virtue of s 32 (see PARA 65); and (2) a reasonable interval has not elapsed since that earlier application for review or the grant of the licence (as the case may be): s 51(5).

17 Licensing Act 2003 s 51(6). Where the relevant licensing authority rejects a ground for a review under s 51(4)(b) (see head (b) in the text), it must give notification in writing as soon as is reasonably practicable to the person making the application for a review: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 32.

18 Licensing Act 2003 s 51(7). Accordingly the requirements imposed under s 51(3)(a) and (b) (see the text and notes 11-12) and by s 52 (see PARA 80) (so far as not already met) apply only to so much (if any) of the application as has not been rejected: s 51(7).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

79 Application for review of licence

TEXT AND NOTES--Where an application is made under Licensing Act 2003 s 51 for review of a premises licence which is held by a management committee in respect of community premises and includes the alternative licence condition, provision is made for the modification of Licensing Act 2003 s 52 (see PARA 80): see Licensing Act 2003 s 52A(1)-(3) (s 52A added by SI 2009/1724). 'The alternative licence condition' is the condition that every supply of alcohol under the premises licence must be made or authorised by the management committee: Licensing Act 2003 s 52A(4). For the meaning of 'management committee' and 'community premises' see PARA 53.

NOTE 11--SI 2005/42 reg 27 substituted, reg 27A added: see PARA 53.

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80. Determination of application for review and rights of appeal.

Where:

- 323 (1) the relevant licensing authority¹ receives an application for review of a premises licence²;
- 324 (2) the applicant has complied with any requirement imposed on him with regard to giving notice of the application³; and
- 325 (3) the authority has complied with any requirement imposed on it with regard to advertisement of the application⁴,

then before determining the application, the authority must hold a hearing⁵ to consider it and any relevant representations⁶. Where a local authority⁷ which is both the relevant licensing authority, and a responsible authority⁸ in respect of any premises⁹, has applied for a review of the premises licence in respect of the premises¹⁰, then it may, in its capacity as licensing authority, determine that application¹¹.

Subject to the statutory requirement to include certain mandatory conditions in premises licences¹², the authority must, having regard to the application and any relevant representations¹³, take such of the steps mentioned in heads (a) to (e) below, if any, as it considers necessary for the promotion of the licensing objectives¹⁴. Those steps are:

- 326 (a) to modify¹⁵ the conditions of the licence¹⁶;
- 327 (b) to exclude a licensable activity¹⁷ from the scope of the licence¹⁸;
- 328 (c) to remove the designated premises supervisor¹⁹;
- 329 (d) to suspend the licence for a period not exceeding three months²⁰;
- 330 (e) to revoke the licence²¹.

Where a licensing authority determines an application for review under these provisions it must notify the determination and its reasons for making it to the holder of the licence, to the applicant, to any person who made relevant representations, and to the chief officer of police²² for the police area, or each police area, in which the premises are situated²³. Such a determination does not have effect until the end of the period given for appealing against the decision, or, if the decision is appealed against, until the appeal is disposed of²⁴.

Where an application for a review of a premises licence is decided under the above provisions, an appeal may be made²⁵ against that decision by the applicant for the review, the holder of the premises licence, or any other person who made relevant representations²⁶ in relation to the application²⁷. The procedure on such an appeal, and the powers of the magistrates' court which hears it, have already been discussed²⁸.

1 As to the meaning of 'relevant licensing authority' see PARA 53 note 13; and as to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

2 le an application made in accordance with the Licensing Act 2003 s 51: see PARA 79. As to the meaning of 'premises licence' see PARA 53 note 1.

3 le any requirement imposed on him under the Licensing Act 2003 s 51(3)(a) or (d): see PARA 79 at heads (1), (4).

4 le any requirement imposed on it under the Licensing Act 2003 s 51(3)(b) or (d): see PARA 79 at heads (2), (4).

5 Notice of the hearing must be given to the holder of the premises licence in respect of which the application has been made; and the notice must be accompanied by the relevant representations (as defined in the Licensing Act 2003 s 52(7): see note 13) which have been made: Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 7, Sch 3, Table para 7. Notice must also be given to persons who have made such representations, and to the person who has made the application under the Licensing Act 2003 s 51(1) (see PARA 79): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 6, Sch 2, Table para 7. The hearing must be held within 20 working days beginning with the day after the end of the period during which representations may be made as prescribed under the Licensing Act 2003 s 51(3)(c) (see PARA 79 at head (3)): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 5, Sch 1, Table para 7. As to the meaning of 'working day' see PARA 44 note 10; and as to the procedure at the hearing, or when a hearing is dispensed with, see PARA 44 et seq.

6 Licensing Act 2003 s 52(1), (2).

7 'Local authority' is not defined for these purposes. As to local authorities generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq; **LONDON GOVERNMENT**. As to the local authorities that are licensing authorities see PARA 3.

8 As to the meaning of 'responsible authority' see PARA 53 note 26.

9 As to the meaning of 'premises' see PARA 27 note 12.

10 le by virtue of the Licensing Act 2003 s 53(2): see PARA 79.

11 Licensing Act 2003 s 53(1), (3).

12 le subject to the Licensing Act 2003 ss 19-21 (see PARA 57): s 52(5).

13 For these purposes, 'relevant representations' means representations which (1) are relevant to one or more of the licensing objectives; and (2) meet the requirements of the Licensing Act 2003 s 52(8): s 52(7). Those requirements are: (a) that the representations are made (i) by the holder of the premises licence, a responsible authority or an interested party; and (ii) within the period prescribed under s 51(3)(c) (see PARA 79 at head (3)); (b) that they have not been withdrawn; and (c) if they are made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious: s 52(8). Where the relevant licensing authority determines that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for that determination: s 52(9). For the prescribed method of notification see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 31, cited in PARA 55 note 4. As to the meaning of 'interested party' see PARA 53 note 24.

14 Licensing Act 2003 s 52(3). The steps taken must be for the purpose of promoting the licensing objectives and not for some other purpose (eg the punishment of the holder of the premises licence). The range of sanctions available is a key feature of the Licensing Act 2003 and one which distinguishes it from the legislation which it superseded. The remedies also represent an important counterweight to the liberalising effect of the relevant provisions relating to the grant and variation of licences.

15 For this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added: Licensing Act 2003 s 52(4).

16 Licensing Act 2003 s 52(4)(a). Where the authority takes such a step, it may provide that the modification is to have effect for only such period (not exceeding three months) as it may specify: s 52(6).

17 As to licensable activities see PARA 28.

18 Licensing Act 2003 s 52(4)(b). Where the authority takes such a step, it may provide that the exclusion is to have effect for only such period (not exceeding three months) as it may specify: s 52(6).

19 Licensing Act 2003 s 52(4)(c). As to the meaning of 'designated premises supervisor' see PARA 55 note 4.

- 20 Licensing Act 2003 s 52(4)(d).
- 21 Licensing Act 2003 s 52(4)(e).
- 22 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.
- 23 Licensing Act 2003 s 52(10). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.
- 24 Licensing Act 2003 s 52(11).
- 25 le to a magistrates' court: see PARA 52.
- 26 See note 13 (definition applied by the Licensing Act 2003 Sch 5 para 8(3)).
- 27 Licensing Act 2003 Sch 5 para 8(1), (2).
- 28 See PARA 52.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

80 Determination of application for review and rights of appeal

NOTE 5--The authority does not have authority to stay the hearing on the ground of an alleged abuse of process: *R (on the application of Harpers Leisure International Ltd) v Chief Constable of Surrey* [2009] EWHC 2160 (Admin), [2010] PTSR 231, [2009] All ER (D) 126 (Jul).

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B. SUMMARY REVIEWS IN SERIOUS CASES OF CRIME OR DISORDER

81. Summary reviews on application of senior police officer.

The chief officer of police¹ of a police force for a police area may apply under these provisions to the relevant licensing authority² for a review of the premises licence³ for any premises⁴ wholly or partly in that area if:

- 331 (1) the premises are licensed premises in relation to the sale of alcohol by retail⁵;
and
- 332 (2) a senior member of that force⁶ has given a certificate that it is his opinion that the premises are associated with serious crime⁷ or serious disorder or both;

and that certificate must accompany the application⁸. The application must be in the prescribed form⁹.

On receipt of such an application, the relevant licensing authority must:

- 333 (a) within 48 hours¹⁰ of the time of its receipt, consider¹¹ whether it is necessary to take interim steps pending the determination of a review of the premises licence; and
- 334 (b) within 28 days after the day of its receipt, review that licence¹² and reach a determination on that review¹³.

The Secretary of State¹⁴ must by regulations:

- 335 (i) require a relevant licensing authority to whom such an application for a review has been made to give notice of the review to the holder of the premises licence and to every responsible authority¹⁵;
- 336 (ii) prescribe the period after the making of the application within which the notice under head (i) above must be given¹⁶;
- 337 (iii) require a relevant licensing authority to advertise the review, inviting representations about it to be made to the authority by the responsible authorities and interested parties¹⁷;
- 338 (iv) prescribe the period after the making of the application within which the advertisement must be published¹⁸;
- 339 (v) prescribe the period after the publication of the advertisement during which representations may be made by the holder of the premises licence, any responsible authority or any interested party¹⁹; and
- 340 (vi) require a notice or advertisement under head (i) or head (iii) above to specify the period prescribed under head (v) above²⁰.

1 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

2 As to the meaning of 'relevant licensing authority' see PARA 53 note 13; and as to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 As to the meaning of 'premises licence' see PARA 53 note 1.

4 As to the meaning of 'premises' see PARA 27 note 12.

5 As to the meanings of 'sale by retail' and 'alcohol' see PARA 30.

6 For these purposes, 'senior member', in relation to a police force, means a police officer who is a member of that force and of or above the rank of superintendent: Licensing Act 2003 s 53A(4) (s 53A added by the Violent Crime Reduction Act 2006 s 21).

7 For these purposes, 'serious crime' has the same meaning as in the Regulation of Investigatory Powers Act 2000 (see s 81(2), (3); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 509): Licensing Act 2003 s 53A(4) (as added: see note 6).

8 Licensing Act 2003 s 53A(1) (as added: see note 6).

9 For the prescribed form see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 16A, Sch 8A (added by SI 2007/2502). As to the provision of forms and the validity of applications and notices given on forms not provided by the authority see regs 40, 41, cited in PARA 39 note 5. For the Welsh language equivalent see the Licensing Act 2003 (Welsh Language Forms) Order 2007, SI 2007/805.

10 In computing the period of 48 hours mentioned in the Licensing Act 2003 s 53A(2)(a) (see head (a) in the text), time that is not on a working day is to be disregarded: s 53A(5) (as added: see note 6). As to the meaning of 'working day' see PARA 44 note 10.

11 Ie under the Licensing Act 2003 s 53B: see PARA 82.

12 Ie under the Licensing Act 2003 s 53C: see PARA 83.

13 Licensing Act 2003 s 53A(2) (as added: see note 6).

14 As to the Secretary of State see PARA 2.

15 Licensing Act 2003 s 53A(3)(a) (as added: see note 6). As to the meaning of 'responsible authority' see PARA 53 note 26. The relevant licensing authority must, within 48 hours of the time of the receipt of the application, give notice of the review to the holder of the premises licence to which the application relates and to each responsible authority, by giving to the holder and each authority a copy of the application and a copy of the certificate given under s 53A(1)(b) that accompanied the application: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 36A(1), (2) (reg 36A added by SI 2007/2502). In computing the above-mentioned period of 48 hours, time that is not on a working day is to be disregarded: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 36A(3) (as so added).

16 Licensing Act 2003 s 53A(3)(b) (as added: see note 6); and see note 15.

17 Licensing Act 2003 s 53A(3)(c) (as added: see note 6). As to the meaning of 'interested party' see PARA 53 note 24. See the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, regs 38(1), 39 cited in PARA 79 note 12, and amended so as to apply for these purposes by SI 2007/2502). For these purposes, the dates referred to in the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 39(b) (see PARA 79 note 12 head (ii)) are the date of the first working day after the day on which the notice was published, and the date of the ninth subsequent working day; and the grounds referred to in reg 39(c) (see PARA 79 note 12 head (iii)) are that in the opinion of a senior police officer the premises are associated with serious crime or serious disorder or both: reg 39A(1) (added by SI 2007/2502).

18 Licensing Act 2003 s 53A(3)(d) (as added: see note 6). The advertisement must be published for a period of no less than seven consecutive days starting on the day after the day on which the relevant licensing authority received the application under s 53A: see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 38(2) (substituted by SI 2007/2502).

19 Licensing Act 2003 s 53A(3)(e) (as added: see note 6). The period prescribed for these purposes is the period beginning on the first working day after the publication of the notice referred to in the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 38 (see note 17) and ending on the ninth subsequent working day: reg 39A(2) (added by SI 2007/2502).

20 Licensing Act 2003 s 53A(3)(f) (as added: see note 6). See note 17.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

81 Summary reviews on application of senior police officer

NOTES 17, 19--SI 2005/42 reg 39B added to provide for notices given in relation to specified applications made by electronic means: SI 2009/3159.

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82. Interim steps pending review.

The following provisions apply to the consideration by a relevant licensing authority¹, on an application for a summary review of a premises licence², whether it is necessary to take interim steps pending the determination of the review applied for³. The consideration may take place without the holder of the premises licence having been given an opportunity to make representations to the relevant licensing authority⁴.

The interim steps the relevant licensing authority must consider taking are:

- 341 (1) the modification of the conditions of the premises licence⁵;
- 342 (2) the exclusion of the sale of alcohol by retail⁶ from the scope of the licence;
- 343 (3) the removal of the designated premises supervisor⁷ from the licence;
- 344 (4) the suspension of the licence⁸.

Where on its consideration of whether to take interim steps the relevant licensing authority does take one or more such steps, its decision takes effect immediately or as soon after that as that authority directs, but it must give immediate notice of its decision and of its reasons for making it to the holder of the premises licence and to the chief officer of police⁹ for the police area in which the premises¹⁰ are situated, or for each police area in which they are partly situated¹¹.

If the holder of the premises licence makes, and does not withdraw, representations against any interim steps taken by the relevant licensing authority, the authority must, within 48 hours¹² of the time of its receipt of the representations, hold a hearing¹³ to consider those representations¹⁴. The relevant licensing authority must give advance notice of the hearing to the holder of the premises licence and to the chief officer of police for the police area in which the premises are situated, or for each police area in which they are partly situated¹⁵. At the hearing, the relevant licensing authority must consider whether the interim steps are necessary for the promotion of the licensing objectives¹⁶ and determine whether to withdraw or modify the steps taken¹⁷. In considering those matters the relevant licensing authority must have regard to:

- 345 (a) the certificate that accompanied the application;
- 346 (b) any representations made by the chief officer of police for the police area in which the premises are situated, or for each police area in which they are partly situated; and
- 347 (c) any representations made by the holder of the premises licence¹⁸.

1 As to the meaning of 'relevant licensing authority' see PARA 53 note 13; and as to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

2 Ie an application under the Licensing Act 2003 s 53A: see PARA 81. As to the meaning of 'premises licence' see PARA 53 note 1.

- 3 Licensing Act 2003 s 53B(1) (s 53B added by the Violent Crime Reduction Act 2006 s 21).
- 4 Licensing Act 2003 s 53B(2) (as added: see note 3).
- 5 For these purposes, the conditions of a premises licence are modified if any of them is altered or omitted or any new condition is added: Licensing Act 2003 s 53B(4) (as added: see note 3).
- 6 As to the meanings of 'sale by retail' and 'alcohol' see PARA 30.
- 7 As to the meaning of 'designated premises supervisor' see PARA 55 note 4.
- 8 Licensing Act 2003 s 53B(3) (as added: see note 3).
- 9 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.
- 10 As to the meaning of 'premises' see PARA 27 note 12.
- 11 Licensing Act 2003 s 53B(5) (as added: see note 3). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.
- 12 In computing that period of 48 hours, time that is not on a working day is to be disregarded: Licensing Act 2003 s 53B(10) (as added: see note 3). As to the meaning of 'working day' see PARA 44 note 10.
- 13 The authority must make its determination at the conclusion of the hearing: see the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 26(1)(aa) (added by SI 2007/2502).
- 14 Licensing Act 2003 s 53B(6) (as added: see note 3).
- 15 Licensing Act 2003 s 53B(7) (as added: see note 3). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.
- 16 As to the licensing objectives see PARA 35.
- 17 Licensing Act 2003 s 53B(8) (as added: see note 3).
- 18 Licensing Act 2003 s 53B(9) (as added: see note 3).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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83. Review of premises licence following review notice; rights of appeal against decision on review.

The following provisions apply to a review of a premises licence¹ which a relevant licensing authority² has to conduct on an application³ for a summary review⁴. The relevant licensing authority must:

- 348 (1) hold a hearing⁵ to consider the application for the review and any relevant representations⁶;
- 349 (2) subject to the statutory requirement to include certain mandatory conditions in premises licences⁷, take such steps mentioned in heads (a) to (e) below, if any, as it considers necessary for the promotion of the licensing objectives⁸; and
- 350 (3) secure that, from the coming into effect of the decision made on the determination of the review, any interim steps⁹ having effect pending that determination cease to have effect, except so far as they are comprised in steps taken in accordance with head (2) above¹⁰.

The steps referred to in head (2) above are:

- 351 (a) the modification of the conditions of the premises licence¹¹;
- 352 (b) the exclusion of a licensable activity¹² from the scope of the licence¹³;
- 353 (c) the removal of the designated premises supervisor¹⁴ from the licence¹⁵;
- 354 (d) the suspension of the licence for a period not exceeding three months¹⁶; or
- 355 (e) the revocation of the licence¹⁷.

Where a relevant licensing authority determines a review under these provisions it must notify the determination and its reasons for making it to the holder of the premises licence, to any person who made relevant representations, and to the chief officer of police¹⁸ for the police area in which the premises¹⁹ are situated, or for each police area in which they are partly situated²⁰. Such a decision does not have effect until the end of the period given for appealing against the decision, or, if the decision is appealed against, the time the appeal is disposed of²¹.

Where a review of a premises licence is decided under the above provisions, an appeal²² may be made against that decision by the chief officer of police for the police area, or each police area, in which the premises are situated, by the holder of the premises licence, or by any other person who made relevant representations²³ in relation to the application for the review²⁴. The procedure on the appeal, and the powers of the magistrates' court which hears it, have already been discussed²⁵.

1 As to the meaning of 'premises licence' see PARA 53 note 1.

2 As to the meaning of 'relevant licensing authority' see PARA 53 note 13.

3 I.e. an application under the Licensing Act 2003 s 53A: see PARA 81.

4 Licensing Act 2003 s 53C(1) (s 53C added by the Violent Crime Reduction Act 2006 s 21).

5 Notice of the hearing must be given to the holder of the premises licence in respect of which the application has been made; and the notice must be accompanied by the relevant representations (as defined in s 53C(7) (see note 6) which have been made: Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 7, Sch 3, Table para 7A (added by SI 2007/2502). Notice must also be given to persons who have made such relevant representations, and to the chief officer of police who made the application under the Licensing Act 2003 s 53A(1) (see PARA 81): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 6, Sch 2, Table para 7A (as so added). The notice must be given no later than five working days before the day or the first day on which the hearing is to be held: reg 6(3)(a) (amended by SI 2007/2502). A party to the hearing must give to the authority, no later than two working days before the day or the first day on which the hearing is to be held, a notice stating whether he intends to attend or be represented at the hearing: Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 8(1), (4)(a) (as so amended). As to the procedure at the hearing see PARA 44 et seq. The authority must make its determination at the conclusion of the hearing: reg 26(1)(ab) (as so added).

6 Licensing Act 2003 s 53C(2)(a) (as added: see note 4). For these purposes, 'relevant representations' means representations which (1) are relevant to one or more of the licensing objectives; and (2) meet the requirements of s 53C(8): s 53C(7) (as so added). Those requirements are: (a) that the representations are made by the holder of the premises licence, a responsible authority or an interested party within the period prescribed under s 53A(3)(e) (see PARA 81 at head (v)); (b) that they have not been withdrawn; and (c) if they are made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious: s 53C(8) (as so added). Where the relevant licensing authority determines that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for that determination: s 53C(9) (as so added). As to the method of notification see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 31, cited in PARA 55 note 4. As to the meanings of 'interested party' and 'responsible authority' see PARA 76 notes 24, 26; and as to the licensing objectives see PARA 35.

7 le subject to ss 19-21 (requirement to include certain conditions in premises licences: see PARA 57): s 53C(5) (as added: see note 4).

8 Licensing Act 2003 s 53C(2)(b) (as added: see note 4).

9 As to interim steps see PARA 82.

10 Licensing Act 2003 s 53C(2)(c) (as added: see note 4).

11 Licensing Act 2003 s 53C(3)(a) (as added: see note 4). For these purposes, the conditions of a premises licence are modified if any of them is altered or omitted or any new condition is added: s 53C(4) (as so added). Where the authority takes such a step, it may provide that the modification is to have effect only for a specified period (not exceeding three months): s 53C(6) (as so added).

12 As to licensable activities see PARA 28.

13 Licensing Act 2003 s 53C(3)(b) (as added: see note 4). Where the authority takes such a step, it may provide that the exclusion is to have effect only for a specified period (not exceeding three months): s 53C(6) (as so added).

14 As to the meaning of 'designated premises supervisor' see PARA 55 note 4.

15 Licensing Act 2003 s 53C(3)(c) (as added: see note 4).

16 Licensing Act 2003 s 53C(3)(d) (as added: see note 4).

17 Licensing Act 2003 s 53C(3)(e) (as added: see note 4).

18 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

19 As to the meaning of 'premises' see PARA 27 note 12.

20 Licensing Act 2003 s 53C(10) (as added: see note 4). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.

21 Licensing Act 2003 s 53C(11) (as added: see note 4).

22 le to a magistrates' court: see PARA 52.

23 le within the meaning of the Licensing Act 2003 s 53C(7) (see note 6): Sch 5 para 8A(3) (Sch 5 para 8A added by the Violent Crime Reduction Act 2006 s 22(2)).

24 Licensing Act 2003 Sch 5 para 8A(1), (2) (as added: see note 23).

25 See PARA 52.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(ix) Special Occasions

84. Relaxation of opening hours for special occasions.

Where the Secretary of State¹ considers that a period ('the celebration period') marks an occasion of exceptional international, national, or local significance, he may make a licensing hours order² providing that during the specified relaxation period³ premises licences⁴ have effect, to the extent that it is not already the case, as if specified times were included in the opening hours⁵. Such an order may: (1) make provision generally or only in relation to premises in one or more specified areas; (2) make different provision in respect of different days during the specified relaxation period; (3) make different provision in respect of different licensable activities⁶.

Before making such an order, the Secretary of State must consult such persons as he considers appropriate⁷.

1 As to the Secretary of State see PARA 3.

2 Licensing Act 2003 s 172(1).

3 'Relaxation period' means: (1) if the celebration period does not exceed four days, that period; or (2) any part of that period not exceeding four days; and 'specified', in relation to a licensing hours order, means specified in the order: Licensing Act 2003 s 172(5).

4 As to the meaning of 'premises licence' see PARA 53 note 1.

5 Licensing Act 2003 s 172(2). Similar provision may be made in relation to club premises certificates: see PARA 107. For these purposes, 'opening hours' means, in relation to a premises licence, the times during which the premises may be used for licensable activities in accordance with the licence: s 172(5). As to licensable activities see PARA 28; and as to the meaning of 'premises' see PARA 27 note 12.

Under the previous legislation, licensing justices might make a special order of exemption adding extra hours to the permitted hours for any premises on a specified special occasion or occasions: see the Licensing Act 1964 s 74(4) (repealed). Televised sporting events occurring overseas were capable of being considered a 'special occasion' within the meaning of that Act: see *Gough v Avon and Somerset Police Licensing Bureau* [2002] EWHC 658 (Admin), 167 JP 79, distinguishing *R v Leicester Justices, ex p Watchorn* (1978) 142 JP Jo 375 and *R v Metropolitan Police Comr, ex p Maynard* (27 May 1982, unreported).

6 Licensing Act 2003 s 172(3).

7 Licensing Act 2003 s 172(4).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

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(3) CLUB PREMISES CERTIFICATES

(i) Introduction

85. Meaning of 'club premises certificate'.

A 'club premises certificate' means a certificate granted under Part 4 of the Licensing Act 2003¹:

- 356 (1) in respect of premises² occupied by, and habitually used for the purposes of, a club³;
- 357 (2) by the relevant licensing authority⁴; and
- 358 (3) certifying that the premises may be used by the club for one or more qualifying club activities⁵ specified in the certificate, and certifying that the club is a qualifying club⁶ in relation to each of those activities⁷.

The benefits of a club premises certificate are described in guidance issued by the Secretary of State⁸ as follows:

- 359 (a) the authority to supply alcohol to members and sell it to guests on the premises to which the certificate relates without the need for any member or employee to hold a personal licence;
- 360 (b) the absence of a requirement to specify a designated premises supervisor;
- 361 (c) more limited rights of entry for the police and authorised persons because the premises are considered private and not generally open to the public;
- 362 (d) exemption from police powers of instant closure on grounds of disorder and noise nuisance, except when being used under the authority of a temporary event notice or premises licence, because qualifying clubs operate under their codes of discipline and rules which are rigorously enforced; and
- 363 (e) exemption from orders of the magistrates' court for the closure of all licensed premises in an area when disorder is happening or expected⁹.

1 le the Licensing Act 2003 Pt 4 (ss 60-97): see the text and notes 2-7; and PARA 86 et seq.

2 As to the meaning of 'premises' see PARA 27 note 12.

3 Licensing Act 2003 s 60(1)(a).

4 Licensing Act 2003 s 60(1)(b). For the purposes of Pt 4, the 'relevant licensing authority' in relation to any premises is the authority in whose area the premises are situated: s 68(1), (2). Where the premises are situated in the areas of two or more licensing authorities, the relevant licensing authority is: (a) the licensing authority in whose area the greater or greatest part of the premises is situated; or (b) if there is no authority to which head (a) above applies, a licensing authority nominated by the applicant for a club premises certificate as the relevant licensing authority in relation to the application and any certificate granted as a result of it: s 68(3), (4). As to the licensing authorities see PARA 3; and as to club premises certificates see PARA 88 et seq. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

5 As to the meaning of 'qualifying club activities' see PARA 29.

6 See PARA 86.

7 Licensing Act 2003 s 60(1)(c), (2).

8 le under the Licensing Act 2003 s 182: see PARA 2.

9 See *Revised Guidance issued under section 182 of the Licensing Act 2003* (28 June 2007, Department for Culture, Media and Sport) para 6.4. That guidance is published on the department's website, accessible at the date at which this volume states the law at www.culture.gov.uk. As to the status of that guidance see 642 HL Official Report (5th series), 17 December 2002, col 629.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(3) CLUB PREMISES CERTIFICATES/(i) Introduction/86. Conditions to be met by qualifying clubs.

86. Conditions to be met by qualifying clubs.

The following provisions apply¹ for determining whether a club is a qualifying club in relation to a qualifying club activity². A club is a qualifying club in relation to the supply of alcohol³ to members or guests⁴ if it satisfies both the general conditions⁵ and the additional conditions⁶ set out below⁷. A club is a qualifying club in relation to the provision of regulated entertainment⁸ if it satisfies those general conditions⁹.

The general conditions which a club must satisfy if it is to be a qualifying club in relation to a qualifying club activity are the following¹⁰:

- 364 (1) under the rules of the club, persons may not be admitted to membership or be admitted as candidates for membership to any of the privileges of membership, without an interval of at least two days between their nomination or application for membership and their admission¹¹;
- 365 (2) under the rules of the club, persons becoming members without prior nomination or application may not be admitted to the privileges of membership without an interval of at least two days between their becoming members and their admission¹²;
- 366 (3) the club is established and conducted in good faith as a club¹³;
- 367 (4) the club has at least 25 members¹⁴;
- 368 (5) alcohol is not supplied, or intended to be supplied, to members on the premises otherwise than by or on behalf of the club¹⁵.

The additional conditions which a club must satisfy if it is to be a qualifying club in relation to the supply of alcohol to members or guests are the following¹⁶:

- 369 (a) subject to special provisions with regard to industrial and provident societies and friendly societies¹⁷, the purchase of alcohol for the club, and the supply of alcohol by the club, so far as not managed by the club in general meeting or otherwise by the general body of members, are managed by a committee whose members are members of the club, have attained the age of 18 years and are elected by the members of the club¹⁸;
- 370 (b) no arrangements are, or are intended to be, made for any person to receive at the expense of the club any commission, percentage or similar payment on, or with reference to, purchases of alcohol by the club¹⁹;
- 371 (c) no arrangements are, or are intended to be, made for any person directly or indirectly to derive any pecuniary benefit from the supply of alcohol by or on behalf of the club to members or guests, apart from any benefit accruing to the club as a whole, or any benefit which a person derives indirectly by reason of the supply giving rise or contributing to a general gain from the carrying on of the club²⁰.

1 Ie the Licensing Act 2003 s 61: see the text and notes 2-9.

2 Licensing Act 2003 s 61(1). As to the meaning of 'qualifying club activities' see PARA 29.

3 As to the meaning of 'alcohol' see PARA 30.

4 'Supply of alcohol to members or guests' means, in the case of any club: (1) the supply of alcohol by or on behalf of the club to, or to the order of, a member of the club; or (2) the sale by retail of alcohol by or on behalf of the club to a guest of a member of the club for consumption on the premises where the sale takes place, and related expressions are to be construed accordingly: Licensing Act 2003 s 70. As to the meaning of 'sale by retail' see PARA 30; and as to the meaning of 'premises' see PARA 27 note 12.

Any reference in the Licensing Act 2003, other than in s 67, to a guest of a member of a club includes a reference to (1) an associate member of the club; and (2) a guest of an associate member of the club: s 67(1). For these purposes, a person is an 'associate member' of a club if (a) in accordance with the rules of the club, he is admitted to its premises as being a member of another club; and (b) that other club is a recognised club: s 67(1). As to the meaning of 'recognised club' see PARA 32 note 3.

5 le the general conditions in the Licensing Act 2003 s 62: see heads (1)-(5) in the text.

6 le the additional conditions in the Licensing Act 2003 s 64: see heads (a)-(c) in the text.

7 Licensing Act 2003 s 61(2).

8 As to the provision of regulated entertainment see PARA 31.

9 Licensing Act 2003 s 61(3).

10 Licensing Act 2003 s 62(1).

11 Licensing Act 2003 s 62(2).

12 Licensing Act 2003 s 62(3).

13 Licensing Act 2003 s 62(4). In determining for these purposes whether a club is established and conducted in good faith as a club, the following matters are to be taken into account: (1) any arrangements restricting the club's freedom of purchase of alcohol; (2) any provision in the rules, or arrangements, under which: (a) money or property of the club; or (b) any gain arising from the carrying on of the club, is or may be applied otherwise than for the benefit of the club as a whole or for charitable, benevolent or political purposes; (3) the arrangements for giving members information about the finances of the club; (4) the books of account and other records kept to ensure the accuracy of that information; (5) the nature of the premises occupied by the club: s 63(1), (2). Having regard to the declaration that is required to accompany the prescribed form of application it would seem that the club must be in existence and compliant with the requirements of ss 60-64 (if alcohol is to be supplied) at the time of lodging the application.

If a licensing authority decides for any purpose of the Licensing Act 2003 that a club does not satisfy the condition in head (3) in the text, the authority must give the club notice of the decision and of the reasons for it: s 63(3). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14; and as to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

14 Licensing Act 2003 s 62(5).

15 Licensing Act 2003 s 62(6).

16 Licensing Act 2003 s 64(1).

17 le subject to the Licensing Act 2003 s 65: see PARA 87.

18 Licensing Act 2003 s 64(2).

19 Licensing Act 2003 s 64(3).

20 Licensing Act 2003 s 64(4).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(3) CLUB PREMISES CERTIFICATES/(i) Introduction/87. Industrial and provident societies, friendly societies and miners' welfare institutes.

87. Industrial and provident societies, friendly societies and miners' welfare institutes.

A club which is an industrial and provident society¹ or a friendly society² is taken to satisfy the condition that the purchase and supply of alcohol³ by a club is to be managed by a committee whose members are elected members of the club over the age of 18⁴ if, and to the extent that, the purchase of alcohol for the club, and the supply of alcohol by the club, are under the control of the members or of a committee appointed by the members⁵.

The Licensing Act 2003 applies in relation to an incorporated friendly society⁶ as it applies in relation to a club, and accordingly: (1) the premises⁷ of the society are to be treated as the premises of a club; (2) the members of the society are to be treated as the members of the club; and (3) anything done by or on behalf of the society is to be treated as done by or on behalf of the club⁸. In determining⁹ whether an incorporated friendly society is a qualifying club in relation to a qualifying club activity¹⁰, the society is to be taken to satisfy certain of the general conditions¹¹ and the additional¹² conditions¹³.

The Licensing Act 2003 also applies to a relevant miners' welfare institute¹⁴ as it applies to a club, and accordingly: (a) the premises of the institute are to be treated as the premises of a club; (b) the persons enrolled as members of the institute are to be treated as the members of the club; and (c) anything done by or on behalf of the trustees or managers in carrying on the institute is to be treated as done by or on behalf of the club¹⁵. In determining¹⁶ whether a relevant miners' welfare institute is a qualifying club in relation to a qualifying club activity, the society is to be taken to satisfy certain of the general conditions¹⁷ and the additional¹⁸ conditions¹⁹.

1 Ie a registered society within the meaning of the Industrial and Provident Societies Act 1965: see s 74(1); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2395.

2 Ie a registered society within the meaning of the Friendly Societies Act 1974 (see s 111(1); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2082) or a registered friendly society within the meaning of the Friendly Societies Act 1992 (see s 116; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2082).

3 As to the meaning of 'alcohol' see PARA 30; and as to the meaning of 'supply of alcohol to members or guests' see PARA 86 note 4.

4 Ie additional condition 1 in the Licensing Act 2003 s 64(2): see PARA 86 at head (a).

5 Licensing Act 2003 s 65(1), (2). References in the Licensing Act 2003, other than in s 65, to s 64(2) or to additional condition 1 in s 64(2) are references to it as read with s 65(1): s 65(3).

6 'Incorporated friendly society' has the same meaning as in the Friendly Societies Act 1992 (see s 116; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2082): Licensing Act 2003 s 65(6).

7 As to the meaning of 'premises' see PARA 27 note 12.

8 Licensing Act 2003 s 65(4).

9 Ie for the purposes of the Licensing Act 2003 s 61: see PARA 86.

10 As to the meaning of 'qualifying club activity' see PARA 29.

11 le general condition 3 in the Licensing Act 2003 s 62(4) and general condition 5 in s 62(6): see PARA 86 at heads (3), (5).

12 As to the additional conditions see s 64; and PARA 86 at heads (a)-(c).

13 Licensing Act 2003 s 65(5).

14 'Miners' welfare institute' means an association organised for the social well-being and recreation of persons employed in or about coal mines (or of such persons in particular): Licensing Act 2003 s 66(3)(a). A miners' welfare institute is 'relevant' if it satisfies one of the following conditions (s 66(3)(b)):

- 19 (1) the institute is managed by a committee or board, and at least two-thirds of the committee or board consists partly of persons appointed or nominated, or appointed or elected from among persons nominated, by one or more licensed operators within the meaning of the Coal Industry Act 1994 (see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 60), and partly of persons appointed or nominated, or appointed or elected from among persons nominated, by one or more organisations representing persons employed in or about coal mines (Licensing Act 2003 s 66(4));
- 20 (2) the institute is managed by a committee or board, but the making of an appointment or nomination falling within head (1) above is not practicable or would not be appropriate, and at least two-thirds of the committee or board consists partly of persons employed, or formerly employed, in or about coal mines, and partly of persons appointed by the Coal Industry Social Welfare Organisation or a body or person to which the functions of that organisation have been transferred under the Miners' Welfare Act 1952 s 12(3) (prospectively repealed) (see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 87) (Licensing Act 2003 s 66(5));
- 21 (3) the premises of the institute are held on trusts to which the Recreational Charities Act 1958 s 2 (see **CHARITIES** vol 8 (2010) PARA 51) applies (Licensing Act 2003 s 66(6)) (the Recreational Charities Act 1958 s 2 is prospectively repealed by the Charities Act 2006 ss 5(1), (3), 75(2), Sch 9, with effect from 1 April 2009: see the Charities Act 2006 (Commencement No 4, Transitional Provisions and Savings) Order 2008, SI 2008/945, art 3, Sch 2; for transitional provisions and savings see arts 4, 5, 10 and the Charities Act 2006 Sch 10 para 2).

15 Licensing Act 2003 s 66(1).

16 See note 9.

17 le general condition 3 in the Licensing Act 2003 s 62(4), general condition 4 in s 62(5) and general condition 5 in s 62(6): see PARA 86 at heads (3)-(5).

18 See note 12.

19 Licensing Act 2003 s 66(2).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(ii) Grant of Club Premises Certificate

88. Application for a club premises certificate.

A club may apply for a club premises certificate¹ in respect of any premises² which are occupied by, and habitually used for the purposes of, the club³. Any application for a club premises certificate must be made to the relevant licensing authority⁴, subject to regulations made by the Secretary of State⁵ as to the form⁶ of applications and notices and the fees⁷ to accompany them⁸. An application must also be accompanied by a club operating schedule⁹, a plan of the premises to which the application relates, in the prescribed form¹⁰, and a copy of the rules of the club¹¹. The Secretary of State must by regulations:

- 372 (1) require an applicant to advertise the application within the prescribed period in the prescribed form, and in a manner which is prescribed and is likely to bring the application to the attention of the interested parties¹² likely to be affected by it¹³;
- 373 (2) require an applicant to give notice of the application to each responsible authority¹⁴, and to such other persons as may be prescribed, within the prescribed period¹⁵;
- 374 (3) prescribe the period during which interested parties and responsible authorities may make representations to the relevant licensing authority about the application¹⁶.

1 As to the meaning of 'club premises certificate' see PARA 85.

2 As to the meaning of 'premises' see PARA 27 note 12.

3 Licensing Act 2003 s 71(1).

4 Licensing Act 2003 s 71(2). As to the meaning of 'relevant licensing authority' see PARA 85 note 4. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

5 The regulations under the Licensing Act 2003 ss 91, 92. In relation to any application or notice under Pt 4 (ss 60-97), regulations may prescribe: (1) its form; (2) the manner in which it is to be made or given; (3) information and documents that must accompany it: s 91. Regulations may also require applications under any provision of Pt 4 (other than s 87: see PARA 103) to be accompanied by a fee, and prescribe the amount of the fee: s 92(1).

6 For the prescribed form of application see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 18, Sch 9 Pt B. On or before making such an application, the club must make a declaration to the relevant licensing authority in the form and containing the information set out in Sch 9 Pt A: reg 17. As to the provision of forms and the validity of applications and notices given on forms not provided by the authority see regs 40, 41, cited in PARA 39 note 5; and as to the method of making the application see reg 21, cited in PARA 53 note 15. For the Welsh language equivalent see the Licensing Act 2003 (Welsh Language Forms) Order 2007, SI 2007/805.

7 For the prescribed fee see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, reg 6(1), Sch 2. Fees are graduated according to the rateable value of the premises: see further reg 3, Sch 1.

In respect of an application which relates to the provision of regulated entertainment only, no fee is payable if the following conditions are satisfied in respect of that application, ie that (1) in the case of an application by a proprietor of an educational institution in respect of premises that are or form part of an educational institution, the educational institution is a school or a college and the provision of regulated entertainment on the premises is carried on by the educational institution for and on behalf of the purposes of the educational institution; or (2) the application is in respect of premises that are or form part of a church hall, chapel hall or other similar building or a village hall, parish hall or community hall or other similar building: reg 9(1), (2). For meanings of 'college' and 'school' see PARA 53 note 16.

8 Licensing Act 2003 ss 71(3), 193.

9 A 'club operating schedule' is a document which is in the prescribed form (see note 6), and includes a statement of the following matters: (1) the qualifying club activities to which the application relates ('the relevant qualifying club activities'); (2) the times during which it is proposed that the relevant qualifying club activities are to take place; (3) any other times during which it is proposed that the premises are to be open to members and their guests; (4) where the relevant qualifying club activities include the supply of alcohol, whether the supplies are proposed to be for consumption on the premises or both on and off the premises; (5) the steps which it is proposed to take to promote the licensing objectives; and (6) such other matters as may be prescribed: Licensing Act 2003 s 71(5). As to the meaning of 'qualifying club activities' see PARA 29; as to the meaning of 'alcohol' see PARA 30; as to the meaning of 'supply of alcohol to members and their guests' see PARA 86 note 4; and as to the licensing objectives see PARA 35.

10 For the prescribed form of plan see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 23, cited in PARA 53 note 19.

11 Licensing Act 2003 s 71(4).

12 'Interested party' means any of the following: (1) a person living in the vicinity of the premises; (2) a body representing persons who live in that vicinity; (3) a person involved in a business in that vicinity; (4) a body representing persons involved in such businesses: Licensing Act 2003 s 69(1), (3).

13 Licensing Act 2003 s 71(6)(a). The prescribed method of advertising the application, and the general information which must be included, is the same as in the case of an application for a premises licence: see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, regs 25, 26(4), cited in PARA 53 notes 22-23. The notices referred to in reg 25 (see PARA 53 note 22) must contain a statement of the relevant qualifying club activities which it is proposed will be carried on on or from the premises: reg 26(1).

14 'Responsible authority' means any of the following: (1) the chief officer of police for any police area in which the premises are situated; (2) the fire and rescue authority for any area in which the premises are situated; the enforcing authority within the meaning given by the Health and Safety at Work etc Act 1974 s 18 (see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 375) for any area in which the premises are situated; (4) the local planning authority within the meaning given by the Town and Country Planning Act 1990 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28 et seq) for any area in which the premises are situated; (5) the local authority by which statutory functions are exercisable in any area in which the premises are situated in relation to minimising or preventing the risk of pollution of the environment or of harm to human health (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 579 et seq); (6) a body which: (a) represents those who, in relation to any such area, are responsible for, or interested in, matters relating to the protection of children from harm; and (b) is recognised by the licensing authority for that area for the purposes of this provision as being competent to advise it on such matters; (7) any licensing authority (other than the relevant licensing authority) in whose area part of the premises is situated; (8) in relation to a vessel: (a) a navigation authority (within the meaning of the Water Resources Act 1991 s 221(1): see **WATER AND WATERWAYS** vol 100 (2009) PARA 189) having functions in relation to the waters where the vessel is usually moored or berthed or any waters where it is, or is proposed to be, navigated at a time when it is used for qualifying club activities; (b) the Environment Agency (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq); (c) the British Waterways Board (see **WATER AND WATERWAYS** vol 101 (2009) PARA 725 et seq); or (d) the Secretary of State; (9) a person prescribed for the purposes of this provision: Licensing Act 2003 s 69(1), (4) (s 69(4) amended by the Fire and Rescue Services Act 2004 Sch 1 para 98(1), (2), (3)(c)). As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq. For these purposes, 'statutory function' means a function conferred by or under any enactment: Licensing Act 2003 s 69(5).

15 Licensing Act 2003 s 71(6)(b). The person making the application must give notice of his application to each responsible authority by giving to each authority a copy of the application together with its accompanying documents, if any, on the same day as the day on which the application is given to the relevant licensing authority: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 27.

16 Licensing Act 2003 s 71(6)(c). Representations may be made at any time during a period of 28 consecutive days starting on the day after the day on which the application to which it relates was given to the authority by the applicant: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 22(1)(b).

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88 Application for a club premises certificate

NOTE 7--As to the fee to accompany an application for minor variation of a club premises certificate under the Licensing Act 2003 s 86A, see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79 reg 6A (added by SI 2009/1809).

TEXT AND NOTES 13-16--The Secretary of State may by regulations (1) require an applicant to give notice of his application to each responsible authority, and such other persons as may be prescribed, within the prescribed period; and (2) in a case where the application is made by means of a relevant electronic facility, require the relevant licensing authority to give notice of the application to such persons as may be prescribed, within the prescribed period: Licensing Act 2003 s 71(7) (added by SI 2009/2999). For the meaning of 'relevant electronic facility' see PARA 53.

TEXT AND NOTE 15--Licensing Act 2003 s 71(6)(b) repealed: SI 2009/2999. SI 2005/42 reg 27 substituted, reg 27A added: see PARA 53.

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89. Inspection of premises before grant of certificate etc.

Where a club applies for a club premises certificate¹ in respect of any premises², a club applies for the variation of a club premises certificate held by it³, or an application is made for review of a club premises certificate⁴, then, on production of his authority, an authorised person⁵ or a constable authorised by the chief officer of police⁶ may enter and inspect the premises⁷. Any entry and inspection must take place at a reasonable time on a day which is not more than 14 days after the making of the application in question, and which is specified in a notice given to the club at least 48 hours in advance⁸. Any person obstructing an authorised person in the exercise of this power commits an offence⁹.

The relevant licensing authority¹⁰ may, on the application of a responsible authority¹¹, extend by not more than seven days the time allowed for carrying out an entry and inspection¹², provided it appears to the authority that: (1) reasonable steps had been taken for an authorised person or constable authorised by the applicant to inspect the premises in good time; but (2) it was not possible for the inspection to take place within the time allowed¹³.

1 As to the meaning of 'club premises certificate' see PARA 85; and as to applications for such a certificate see PARA 88.

2 As to the meaning of 'premises' see PARA 27 note 12.

3 Ie under the Licensing Act 2003 s 84: see PARA 101.

4 Ie under the Licensing Act 2003 s 87: see PARA 103.

5 'Authorised person' means any of the following: (1) an officer of a licensing authority in whose area the premises are situated who is authorised by that authority for the purposes of the Licensing Act 2003; (2) an inspector appointed by the fire and rescue authority for the area in which the premises are situated; (3) an inspector appointed under the Health and Safety at Work etc Act 1974 s 19 (see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 375; (4) an officer of a local authority, in whose area the premises are situated, who is authorised by that authority for the purposes of exercising one or more of its statutory functions in relation to minimising or preventing the risk of pollution of the environment or of harm to human health (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 579 et seq); (5) in relation to a vessel, an inspector, or a surveyor of ships, appointed under the Merchant Shipping Act 1995 s 256 (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46); (6) a person prescribed by regulations for these purposes: Licensing Act 2003 s 69(1), (2) (amended by SI 2005/1541). 'Statutory function' means a function conferred by or under any enactment: Licensing Act 2003 s 69(5). As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

6 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq; and as to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

7 Licensing Act 2003 s 96(1), (2).

8 See the Licensing Act 2003 s 96(3), (4).

9 Licensing Act 2003 s 96(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 96(6). As to the standard scale see PARA 17 note 21.

10 As to the meaning of 'relevant licensing authority' see PARA 85 note 4.

11 As to the meaning of 'responsible authority' see PARA 88 note 14.

12 Licensing Act 2003 s 96(7).

13 Licensing Act 2003 s 96(8).

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90. Determination of application for a club premises certificate and rights of appeal.

Where the relevant licensing authority¹ receives an application² for a club premises certificate³ and is satisfied that the applicant has complied with any requirement imposed on him with regard to advertisement and notice of the application⁴, then unless relevant representations are made⁵ the authority must grant the certificate in accordance with the application subject only to such conditions as are consistent with the club operating schedule⁶ accompanying the application, and to any mandatory conditions which must⁷ be included in the certificate⁸. The certificate may authorise off-supplies only if it authorises on-supplies⁹.

Where relevant representations¹⁰ are made, the authority must:

- 375 (1) hold a hearing¹¹ to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary; and
- 376 (2) having regard to the representations, take such of the steps mentioned in heads (a) to (c) below, if any, as it considers necessary for the promotion of the licensing objectives¹².

Those steps are:

- 377 (a) to grant the certificate subject to such conditions as are consistent with the club operating schedule¹³, modified¹⁴ to such extent as the authority considers necessary for the promotion of the licensing objectives, and subject also to any mandatory conditions which must¹⁵ be included in the certificate¹⁶;
- 378 (b) to exclude from the scope of the certificate any of the qualifying club activities¹⁷ to which the application relates¹⁸;
- 379 (c) to reject the application¹⁹.

In discharging its duty under the above provisions, a licensing authority may grant a club premises certificate subject to different conditions in respect of different parts of the premises concerned and different qualifying club activities²⁰.

Where an application for a club premises certificate is granted, the relevant licensing authority must forthwith give a notice to that effect to the applicant, to any person who made relevant representations²¹ in respect of the application, and to the chief officer of police for the police area, or each police area, in which the premises are situated²². The authority must also issue the club with the club premises certificate and a summary of it²³. Where such an application is rejected, the relevant licensing authority must forthwith give a notice to that effect, stating its reasons for that decision, to the applicant, to any person who made relevant representations in respect of the application, and to the chief officer of police for the police area, or each police area, in which the premises are situated²⁴.

Where a licensing authority rejects an application for a club premises certificate, the club that made the application may appeal²⁵ against the decision²⁶. Where a licensing authority grants a club premises certificate, then the club holding the certificate may appeal against any decision to impose conditions on the certificate²⁷ or to take any step mentioned in head (b) above²⁸; and

where a person who made relevant representations²⁹ in relation to the application desires to contend that the certificate ought not to have been granted, or that, on granting the certificate, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in head (b) above, he may appeal against the decision³⁰. The procedure on such an appeal, and the powers of the magistrates' court which hears it, have already been discussed³¹.

1 As to the meaning of 'relevant licensing authority' see PARA 85 note 4. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

2 Ie an application made in accordance with the Licensing Act 2003 s 71: see PARA 88.

3 As to the meaning of 'club premises certificate' see PARA 85.

4 Ie any requirement imposed under the Licensing Act 2003 s 71(6): see PARA 88.

5 Ie subject to the Licensing Act 2003 s 72(3): see the text and notes 9-12.

6 As to the meaning of 'club operating schedule' see PARA 88 note 9.

7 Ie under the Licensing Act 2003 s 73(2)-(5) or s 74: see PARAS 92-93.

8 Licensing Act 2003 s 72(1), (2).

9 See the Licensing Act 2003 s 72(5), which provides that s 72(2), (3)(b) (see the text and notes 5-8 and head (2) in the text) is subject to s 73(1) (see PARA 92).

10 'Relevant representations' means representations which: (1) are about the likely effect of the grant of the certificate on the promotion of the licensing objectives; and (2) meet the requirements of the Licensing Act 2003 s 72(8): s 72(7). Those requirements are: (a) that the representations were made by an interested party or responsible authority within the period prescribed under s 71(6)(c) (see PARA 88 at head (3)); (b) that they have not been withdrawn; and (c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious: s 72(8). Where the authority determines for the purposes of head (c) above that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for its determination: s 72(9). As to the method of such determination see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 31, cited in PARA 55 note 4. As to the licensing objectives see PARA 35. As to the meanings of 'interested party' and 'responsible authority' see PARA 88 notes 12, 14.

11 Notice of the hearing must be given to the club which has made the application under the Licensing Act 2003 s 71(1); and the notice must be accompanied by the relevant representations as defined in s 72(7) (see note 10): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 7, Sch 3, Table para 8. Notice must also be given to persons who have made such representations: reg 6, Sch 2, Table para 8. The hearing must be held within 20 working days beginning with the day after the end of the period during which representations may be made as prescribed under the Licensing Act 2003 s 71(6)(c) (see PARA 88): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 5, Sch 1, Table para 8. As to the meaning of 'working day' see PARA 44 note 10. As to the procedure at the hearing, or when a hearing is dispensed with, see PARA 44 et seq.

12 Licensing Act 2003 s 72(3).

13 Ie the conditions mentioned in the Licensing Act 2003 s 72(2)(a).

14 For these purposes, the conditions mentioned in the Licensing Act 2003 s 72(2)(a) are modified if any of them is altered or omitted or any new condition is added: s 72(6).

15 See note 7.

16 Licensing Act 2003 s 72(4)(a).

17 As to the meaning of 'qualifying club activity' see PARA 29.

18 Licensing Act 2003 s 72(4)(b).

- 19 Licensing Act 2003 s 72(4)(c).
- 20 Licensing Act 2003 s 72(10).
- 21 le within the meaning of the Licensing Act 2003 s 72(7) (see note 10): s 77(4).
- 22 Licensing Act 2003 s 77(1)(a). Where relevant representations were made in respect of the application, the notice under s 77(1)(a) must specify the authority's reasons for its decision as to the steps (if any) to take under s 72(3)(b) (see head (2) in the text): s 77(2). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14. As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.
- 23 Licensing Act 2003 s 77(1)(b). As to the form of the certificate and summary see PARA 91.
- 24 Licensing Act 2003 s 77(3).
- 25 le to a magistrates' court: see PARA 52.
- 26 Licensing Act 2003 Sch 5 para 10.
- 27 le to impose conditions under the Licensing Act 2003 s 72(2) or (3)(b).
- 28 Licensing Act 2003 Sch 5 para 11(1), (2).
- 29 As to the meaning of 'relevant representations' see note 10 (definition applied by the Licensing Act 2003 Sch 5 para 11(4)).
- 30 Licensing Act 2003 Sch 5 para 11(3). On such an appeal, the club that holds or held the club premises certificate is to be the respondent in addition to the licensing authority: Sch 5 para 15(3).
- 31 See PARA 52.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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91. Form of certificate and summary.

A club premises certificate¹ and the summary of such a certificate² must be in the form prescribed by regulations made by the Secretary of State³. Such regulations must, in particular, provide for the certificate to:

- 380 (1) specify the name of the club and the address which is to be its relevant registered address⁴;
- 381 (2) specify the address of the premises⁵ to which the certificate relates⁶;
- 382 (3) include a plan of those premises⁷;
- 383 (4) specify the qualifying club activities⁸ for which the premises may be used⁹;
- 384 (5) specify the conditions subject to which the certificate has effect¹⁰.

A club premises certificate must include an identifier for the relevant licensing authority¹¹ and a number that is unique to the certificate¹²; and a summary of a club premises certificate must include that identifier and the certificate number¹³.

1 As to the meaning of 'club premises certificate' see PARA 85.

2 As to the licensing authority's duty to issue a summary of the certificate see PARA 90.

3 Licensing Act 2003 ss 78(1), 193. As to the Secretary of State see PARA 2. For the prescribed form of club premises certificate see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 35(c), Sch 13 Pt A; and for the prescribed form of summary see reg 36(c), Sch 13 Pt B. For the Welsh language equivalents see the Licensing Act 2003 (Welsh Language Forms) Order 2007, SI 2007/805.

4 Licensing Act 2003 s 78(2)(a). As to the meaning of 'relevant registered address' see PARA 39 note 12 (definition applied by s 78(2)(a)).

5 As to the meaning of 'premises' see PARA 27 note 12.

6 Licensing Act 2003 s 78(2)(b).

7 Licensing Act 2003 s 78(2)(c).

8 As to the meaning of 'qualifying club activities' see PARA 29.

9 Licensing Act 2003 s 78(2)(d).

10 Licensing Act 2003 s 78(2)(e). As to the conditions that may be imposed see PARA 88; and as to mandatory conditions see PARAS 92-93.

11 As to the meaning of 'relevant licensing authority' see PARA 85 note 4. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

12 Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 35(a), (b).

13 Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 36(a), (b).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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92. Certificate authorising the supply of alcohol for consumption off the premises.

A club premises certificate¹ may not authorise the supply of alcohol² for consumption off the premises³ unless it also authorises the supply of alcohol to a member of the club⁴ for consumption on those premises⁵.

A club premises certificate which authorises the supply of alcohol for consumption off the premises must include the following conditions⁶:

- 385 (1) the supply must be made at a time when the premises are open for the purposes of supplying alcohol, in accordance with the club premises certificate, to members of the club for consumption on the premises⁷;
- 386 (2) any alcohol supplied for consumption off the premises must be in a sealed container⁸;
- 387 (3) any supply of alcohol for consumption off the premises must be made to a member of the club in person⁹.

1 As to the meaning of 'club premises certificate' see PARA 85.

2 As to the meaning of 'alcohol' see PARA 30.

3 As to the meaning of 'premises' see PARA 27 note 12.

4 As to the supply of alcohol to a member or guest see PARA 86 note 4.

5 Licensing Act 2003 s 73(1).

6 Licensing Act 2003 s 73(2).

7 Licensing Act 2003 s 73(3).

8 Licensing Act 2003 s 73(4).

9 Licensing Act 2003 s 73(5).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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93. Conditions.

Where a club premises certificate¹ authorises the exhibition of films, the certificate must include a condition requiring the admission of children² to the exhibition of any film to be restricted in accordance with any recommendation made:

- 388 (1) by the film classification body³, where that body is specified in the certificate⁴; or
- 389 (2) by the relevant licensing authority⁵ where either the film classification body is not specified in the certificate, or the authority has notified the club which holds the certificate that recommendations made by the authority apply to the film in question⁶.

Where the rules of a club provide for the sale by retail of alcohol⁷ on any premises⁸ by or on behalf of the club to, or to a guest of, an associate member⁹ of the club, no condition may be attached to a club premises certificate in respect of the sale by retail of alcohol on those premises by or on behalf of the club so as to prevent the sale by retail of alcohol to any such associate member or guest¹⁰.

Where the rules of a club provide for the provision of any regulated entertainment¹¹ on any premises by or on behalf of the club to, or to a guest of, an associate member of the club, no condition may be attached to a club premises certificate in respect of the provision of any such regulated entertainment on those premises by or on behalf of the club so as to prevent its provision to any such associate member or guest¹².

In relation to a club premises certificate which authorises the performance of plays, no condition may be attached to the certificate as to the nature of the plays which may be performed, or the manner of performing plays, under the certificate¹³; but this does not prevent a licensing authority imposing¹⁴ any condition which it considers necessary on the grounds of public safety¹⁵.

The conditions which must be included in a certificate authorising the sale of alcohol for consumption off the premises have already been discussed¹⁶.

Where a club premises certificate authorises the supply of alcohol for consumption on the premises, and the provision of music entertainment¹⁷, and the premises are used primarily for the supply of alcohol for consumption on the premises, and have a permitted capacity¹⁸ of not more than 200 persons, then at any time when the premises are open for the purposes of being used for the supply of alcohol for consumption on the premises, and are being used for the provision of music entertainment, and heads (i) and (ii) below do not apply¹⁹, any licensing authority imposed condition²⁰ of the club premises certificate which relates to the provision of music entertainment does not have effect, in relation to the provision of that entertainment, unless it falls within head (a) or head (b) below²¹. A condition falls:

- 390 (a) within this head if the club premises certificate specifies that the licensing authority which granted the certificate considers the imposition of the condition necessary on one or both of the following grounds, namely the prevention of crime and disorder and public safety²²;

- 391 (b) within this head if, on a review of the club premises certificate²³, it is altered so as to include a statement that the statutory provision relating to dancing and live music in certain small premises²⁴ does not apply to it, or it is added to the certificate and includes such a statement²⁵.

Where a club premises certificate authorises the provision of music entertainment, and the premises have a permitted capacity of not more than 200 persons, then:

- 392 (i) at any time between the hours of 8 am and midnight when the premises are being used for the provision of music entertainment which consists of the performance of unamplified, live music, or facilities for enabling persons to take part in such entertainment; but
- 393 (ii) are not being used for the provision of any other description of regulated entertainment²⁶,

any licensing authority imposed condition of the club premises certificate which relates to the provision of the music entertainment does not have effect, in relation to the provision of that entertainment, unless it falls within head (b) above²⁷.

There is also a general prohibition on the sale of alcohol at motorway and certain other service areas and from premises used primarily as a garage²⁸.

1 As to the meaning of 'club premises certificate' see PARA 85.

2 For these purposes, 'children' means persons aged under 18: Licensing Act 2003 s 74(4).

3 'Film classification body' means the person or persons designated as the authority under the Video Recordings Act 1984 s 4 (authority to determine suitability of video works for classification see PARA 279): Licensing Act 2003 s 74(4).

4 Licensing Act 2003 s 74(1), (2).

5 As to the meaning of 'relevant licensing authority' see PARA 85 note 4. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

6 Licensing Act 2003 s 74(1), (3).

7 As to the meanings of 'sale by retail' and 'alcohol' see PARA 30.

8 As to the meaning of 'premises' see PARA 27 note 12.

9 As to the meaning of 'associate member' see PARA 86 note 4.

10 Licensing Act 2003 s 75(1).

11 As to the provision of regulated entertainment see PARA 31.

12 Licensing Act 2003 s 75(2).

13 Licensing Act 2003 s 76(1).

14 In accordance with the Licensing Act 2003 with s 72(2) or (3)(b) (see PARA 88), s 85(3)(b) (see PARA 101) or s 88(3) (see PARA 103).

15 Licensing Act 2003 s 76(2).

16 See PARA 92.

17 As to the meaning of 'music entertainment' for these purposes see PARA 57 note 22 (definition applied by virtue of the Licensing Act 2003 s 177(7)).

18 As to the meaning of 'permitted capacity', for these purposes see PARA 57 note 23 (definition applied by virtue of the Licensing Act 2003 s 177(7)).

19 Ie the Licensing Act 2003 s 177(4) does not apply.

20 For these purposes, 'licensing authority imposed condition' means a condition which is imposed by virtue of the Licensing Act 2003 s 72(3)(b) (but is not referred to in s 72(2)) (see PARA 88) or which is imposed by virtue of s 85(3)(b) (see PARA 102) or s 88(3) (see PARA 104): Licensing Act 2003 s 177(8) (definition applied with modifications by s 177(7)).

21 Licensing Act 2003 s 177(1), (2) (applied by virtue of s 177(7)).

22 Licensing Act 2003 s 177(5) (applied by virtue of s 177(7)).

23 As to reviews of club premises certificates see PARAS 103-104.

24 Ie the Licensing Act 2003 s 177: see the text and notes 17-23, 25-27.

25 Licensing Act 2003 s 177(6) (applied by virtue of s 177(7)).

26 As to the provision of regulated entertainment see PARA 31.

27 Licensing Act 2003 s 177(3), (4) (applied by virtue of s 177(7)).

28 See the Licensing Act 2003 s 176; and PARA 57 text and note 33.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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94. Annual fee for club premises certificate.

Regulations made by the Secretary of State¹ may require the payment of an annual fee to the relevant licensing authority² by or on behalf of a club which holds a club premises certificate³. Such regulations may include provision imposing liability for the making of the payment on the secretary⁴ or such other officers or members of the club as may be prescribed, prescribing the amount of any such fee, and prescribing the time at which any such fee is due⁵. Any such fee which is owed to a licensing authority may be recovered as a debt due to the authority from any person liable⁶ to make the payment⁷.

The requirement to pay to the relevant licensing authority an annual fee does not, however, apply in a circumstance where on the date the fee becomes due and payable the following conditions are satisfied, namely that:

- 394 (1) the club premises certificate licence in respect of the premises⁸ to which it relates authorises the provision of regulated entertainment⁹ only; and
- 395 (2) either:
 - 17 27. (a) the holder of the club premises certificate is the proprietor of an educational institution which is a school¹⁰ or college¹¹, the certificate has effect in respect of premises that are or form part of the educational institution, and the provision of regulated entertainment on the premises is carried on by the educational institution for and on behalf of the purposes of the educational institution; or
 28. (b) the club premises certificate has effect in respect of premises that are or form part of a church hall, chapel hall or other similar building or a village hall, parish hall or community hall or other similar building¹².

18

1 As to the Secretary of State see para 2.

2 As to the meaning of 'relevant licensing authority' see PARA 85 note 4. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 Licensing Act 2003 ss 92(2), 193. As to the meaning of 'club premises certificate' see PARA 85.

4 'Secretary', in relation to a club, includes any person, whether or not an officer of the club, performing the duties of a secretary: Licensing Act 2003 s 70.

5 Licensing Act 2003 s 92(3). The prescribed amount of the annual fee is determined in accordance with the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, reg 7(1) and is due and payable each year on the anniversary of the date of the grant of the club premises certificate (see reg 7(3)). Fees are graduated according to the rateable value of the premises: see further reg 3, Sch 1.

6 le by virtue of the Licensing Act 2003 s 92(3)(a). Payment is the responsibility of the secretary of the club holding the certificate: see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, reg 7(2).

7 Licensing Act 2003 s 92(4).

- 8 As to the meaning of 'premises' see PARA 27 note 12.
- 9 As to the provision of regulated entertainment see PARA 31.
- 10 As to the meaning of 'school' see PARA 53 note 16.
- 11 As to the meaning of 'college' see PARA 53 note 16.
- 12 Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, reg 10.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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95. Theft, loss or damage of certificate or summary.

Where a club premises certificate¹ or summary² is lost, stolen, damaged or destroyed, the club may apply to the relevant licensing authority³ for a copy of the certificate or summary⁴. The application must be accompanied by the prescribed fee⁵.

Where an application is made for a copy, the relevant licensing authority must issue the club with a copy of the certificate or summary, certified by the authority to be a true copy, if it is satisfied that the certificate or summary has been lost, stolen, damaged or destroyed, and that where it has been lost or stolen, the club has reported the loss or theft to the police⁶. The copy issued must be a copy of the club premises certificate or summary in the form in which it existed immediately before it was lost, stolen, damaged or destroyed⁷.

The provisions of the Licensing Act 2003 apply in relation to such a copy as they apply in relation to an original club premises certificate or summary⁸.

1 As to the meaning of 'club premises certificate' see PARA 85.

2 As to the issuing of a summary see PARA 90.

3 As to the meaning of 'relevant licensing authority' see PARA 85 note 4. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

4 Licensing Act 2003 s 79(1).

5 The Licensing Act 2003 is subject to regulations under s 92(1) (power to prescribe fee to accompany application: see PARA 88 note 5): s 79(2). At the date at which this volume states the law, the prescribed fee was £10.50: see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, Sch 6.

6 Licensing Act 2003 s 79(3).

7 Licensing Act 2003 s 79(4).

8 Licensing Act 2003 s 79(5).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(iii) Duration of Certificate

96. Duration of a club premises certificate.

A club premises certificate¹ has effect until such time as it is withdrawn² or it lapses³ on receipt of a notice of surrender⁴. A club premises certificate does not have effect during any period when it is suspended⁵ after an application for review⁶.

Where a club which holds a club premises certificate decides to surrender it, the club may give the relevant licensing authority⁷ a notice to that effect⁸. The notice must be accompanied by the club premises certificate or, if that is not practicable, by a statement of the reasons for the failure to produce the certificate⁹. Where such a notice is given, the certificate lapses on receipt of the notice by the authority¹⁰.

1 As to the meaning of 'club premises certificate' see PARA 85.

2 Ie under the Licensing Act 2003 s 88 (see PARA 103) or s 90 (see PARA 105).

3 Ie when it is surrendered by virtue of the Licensing Act 2003 s 81(3): see the text to note 10.

4 Licensing Act 2003 s 80(1).

5 Ie under the Licensing Act 2003 s 88: see PARA 103. Note that a club premises certificate may also be suspended for non-payment of an alcohol disorder zone charge: see the Local Authorities (Alcohol Disorder Zones) Regulations 2008, SI 2008/1430, reg 20; PARA 218; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

6 Licensing Act 2003 s 80(2).

7 As to the meaning of 'relevant licensing authority' see PARA 85 note 4. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

8 Licensing Act 2003 s 81(1). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.

9 Licensing Act 2003 s 81(2).

10 Licensing Act 2003 s 81(3).

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(3) CLUB PREMISES CERTIFICATES/(iv) Duties with regard to Club Premises Certificates/97. Duty to keep and produce a club premises certificate.

(iv) Duties with regard to Club Premises Certificates

97. Duty to keep and produce a club premises certificate.

Whenever premises¹ in respect of which a club premises certificate² has effect are being used for one or more qualifying club activities³ authorised by the certificate, the secretary⁴ of the club must secure that the certificate, or a certified copy⁵ of it, is kept at the premises in the custody or under the control of a person (the 'nominated person') who: (1) is the secretary of the club, any member of the club or any person who works at the premises for the purposes of the club; (2) has been nominated for the purpose by the secretary in writing; and (3) has been identified to the relevant licensing authority in a notice given by the secretary⁶. The nominated person must secure that the summary of the certificate⁷ or a certified copy of that summary, and a notice specifying the position which he holds at the premises, are prominently displayed at the premises⁸.

A constable or an authorised person⁹, on production of evidence of his authority, may require the nominated person to produce the club premises certificate (or certified copy) for examination¹⁰. A person commits an offence if he fails, without reasonable excuse, to produce a club premises certificate or certified copy of a club premises certificate if so required¹¹.

1 As to the meaning of 'premises' see PARA 27 note 12.

2 As to the meaning of 'club premises certificate' see PARA 85.

3 As to the meaning of 'qualifying club activities' see PARA 29.

4 As to the meaning of 'secretary' see PARA 94 note 4.

5 Any reference in the Licensing Act 2003 s 94 to a certified copy of a document is a reference to a copy of the document which is certified to be a true copy by: (1) the relevant licensing authority; (2) a solicitor or notary; or (3) a person of a description prescribed by regulations made by the Secretary of State: ss 94(12), 95(1), 193. 'Notary' is prospectively defined for these purposes as meaning a person (other than a solicitor) who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to any activity which constitutes a notarial activity (within the meaning of that Act): see the Licensing Act 2003 s 95(4) (prospectively added by the Legal Services Act 2007 Sch 21 paras 139, 141, as from a day to be appointed under s 211(2); at the date at which this volume states the law, no such day had been appointed and that definition was not in force). At the date at which this volume states the law, no person had been prescribed for the purposes of head (3) above. As to the meaning of 'relevant licensing authority' see PARA 85 note 4. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

A document which purports to be a certified copy of a document is to be taken to be such a copy, and to comply with the requirements of s 95(2) (see note 10), unless the contrary is shown: s 95(3).

6 Licensing Act 2003 s 94(2), (3). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14. The secretary commits an offence if he fails, without reasonable excuse, to comply with s 94(2): s 94(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 94(10). As to the standard scale see PARA 17 note 21.

7 The reference in the text to the summary of the certificate is a reference to the summary issued under the Licensing Act 2003 s 77 (see PARA 90) or, where one or more summaries have subsequently been issued under s 93 (see PARA 100), the most recent summary to be so issued: s 94(11).

8 Licensing Act 2003 s 94(4). The nominated person commits an offence if he fails, without reasonable excuse, to comply with s 94(4): s 94(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 94(10).

9 As to the meaning of 'authorised person' see PARA 89 note 5. As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

10 Licensing Act 2003 s 94(7), (8). Any certified copy produced in accordance with a requirement under s 94(7) must be a copy of the document in the form in which it exists at the time: s 95(2).

11 Licensing Act 2003 s 94(9). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 94(10).

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

97 Duty to keep and produce a club premises certificate

NOTE 5--Amendments made by Legal Services Act 2007 Sch 21 paras 139, 141 in force 1 January 2010: SI 2009/3250.

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98. Duty to give notice of change of name or alteration of rules of club.

Where a club holds a club premises certificate¹, or has made an application for a club premises certificate which has not been determined by the relevant licensing authority², the secretary³ of the club must give the relevant licensing authority notice of any change in the name, or alteration made to the rules, of the club⁴. Such a notice by a club which holds a club premises certificate must be accompanied by the prescribed fee⁵ and by the certificate or, if that is not practicable, by a statement of the reasons for the failure to produce the certificate⁶. An authority notified of a change in the name, or alteration to the rules, of a club must amend the club premises certificate accordingly⁷, but this does not require or authorise the making of any amendment to a club premises certificate so as to change the premises⁸ to which the certificate relates, and no amendment made has effect so as to change those premises⁹.

If notice is not given within the 28 days following the day on which the change of name or alteration to the rules is made, the secretary of the club commits an offence¹⁰.

1 As to the meaning of 'club premises certificate' see PARA 85.

2 As to the meaning of 'relevant licensing authority' see PARA 85 note 4. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2. As to applications for certificates see PARA 88.

3 As to the meaning of 'secretary' see PARA 94 note 4.

4 Licensing Act 2003 s 82(1).

5 The Licensing Act 2003 s 82(1) is subject to regulations under s 92(1) (power to prescribe fee to accompany application: see PARA 88 note 5): s 82(2). At the date at which this volume states the law, the prescribed fee was £10.50: see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, Sch 6.

6 Licensing Act 2003 s 82(3).

7 Licensing Act 2003 s 82(4).

8 As to the meaning of 'premises' see PARA 27 note 12.

9 Licensing Act 2003 s 82(5).

10 Licensing Act 2003 s 82(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 82(7). As to the standard scale see PARA 17 note 21.

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(3) CLUB PREMISES CERTIFICATES/(iv) Duties with regard to Club Premises Certificates/99. Duty to give notice of change of address of club.

99. Duty to give notice of change of address of club.

A club which holds a club premises certificate¹ may give the relevant licensing authority² notice of any change desired to be made in the address which is to be the club's relevant registered address³.

If a club which holds a club premises certificate ceases to have any authority to make use of the address which is its relevant registered address, it must as soon as reasonably practicable give to the relevant licensing authority notice of the change to be made in the address which is to be the club's relevant registered address⁴; and if a club fails, without reasonable excuse, to comply with this requirement the secretary⁵ commits an offence⁶.

A notice given under the provisions set out above must be accompanied by the prescribed fee⁷. It must also be accompanied by the club premises certificate or, if that is not practicable, by a statement of the reasons for the failure to produce the certificate⁸.

An authority notified of a change to be made in the relevant registered address of a club must amend the club premises certificate accordingly⁹.

1 As to the meaning of 'club premises certificate' see PARA 85.

2 As to the meaning of 'relevant licensing authority' see PARA 85 note 4. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 Licensing Act 2003 s 83(1). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14. As to the meaning of 'relevant registered address' see PARA 39 note 12 (definition applied by s 83(8)).

4 Licensing Act 2003 s 83(2).

5 As to the meaning of 'secretary' see PARA 94 note 4.

6 Licensing Act 2003 s 83(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 83(7). As to the standard scale see PARA 17 note 21.

7 The Licensing Act 2003 s 83(1), (2) is subject to any fee that may be prescribed by regulations under s 92(1) (power to prescribe fee to accompany application: see PARA 88 note 5): s 83(3). At the date at which this volume states the law, the prescribed fee was £10.50: see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, Sch 6.

8 Licensing Act 2003 s 83(4).

9 Licensing Act 2003 s 83(5).

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(3) CLUB PREMISES CERTIFICATES/(iv) Duties with regard to Club Premises Certificates/100. Licensing authority's duty to update club premises certificate.

100. Licensing authority's duty to update club premises certificate.

Where the relevant licensing authority¹, in relation to a club premises certificate², makes a determination or receives a notice³, or an appeal against a decision⁴ is disposed of, the relevant licensing authority must make the appropriate amendments (if any) to the certificate and, if necessary, issue a new summary of the certificate⁵.

Where a licensing authority is not in possession of the club premises certificate, it may, for the purpose of discharging its obligations to amend the certificate, require the secretary⁶ of the club to produce the certificate to the authority within 14 days from the date on which the club is notified of the requirement⁷. A person commits an offence if he fails, without reasonable excuse, to comply with such a requirement⁸.

1 As to the meaning of 'relevant licensing authority' see PARA 85 note 4. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

2 As to the meaning of 'club premises certificate' see PARA 85.

3 Ie under the Licensing Act 2003 Pt 4 (ss 60-97).

4 See note 3. As to appeals generally see PARA 52.

5 Licensing Act 2003 s 93(1). As to the summary see PARA 90.

6 As to the meaning of 'secretary' see PARA 94 note 4.

7 Licensing Act 2003 s 93(2).

8 Licensing Act 2003 s 93(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 93(4). As to the standard scale see PARA 17 note 21.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(3) CLUB PREMISES CERTIFICATES/(v) Variation, Review and Withdrawal of Certificates/A. VARIATION OF CERTIFICATES/101. Application to vary club premises certificate.

(v) Variation, Review and Withdrawal of Certificates

A. VARIATION OF CERTIFICATES

101. Application to vary club premises certificate.

A club which holds a club premises certificate¹ may apply to the relevant licensing authority² for variation of the certificate³. This is subject to regulations made by the Secretary of State⁴ as to the form⁵ of the application and the fee⁶ to accompany it⁷. An application must also be accompanied by the club premises certificate or, if that is not practicable, by a statement of the reasons for the failure to provide the certificate⁸.

The Secretary of State has a duty⁹ to make regulations as to the advertisement of an application to vary a certificate¹⁰. The prescribed method of advertising the application, and the general information which must be included, is the same as in the case of an application for a club premises certificate¹¹. The relevant notices¹² must briefly describe the proposed variation¹³.

The person making the application must give notice of his application to each responsible authority¹⁴ by giving to each authority a copy of the application together with its accompanying documents, if any, on the same day as the day on which the application is given to the relevant licensing authority¹⁵.

1 As to the meaning of 'club premises certificate' see PARA 85.

2 As to the meaning of 'relevant licensing authority' see PARA 85 note 4. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 Licensing Act 2003 s 84(1). As to inspection of the premises where such an application is made see s 96; and PARA 89.

4 Ie under the Licensing Act 2003 ss 91, 92: see PARA 88 note 5.

5 For the prescribed form of application see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 19, Sch 10. As to the provision of forms and the validity of applications and notices given on forms not provided by the authority see regs 40, 41, cited in PARA 39 note 5. For the Welsh language equivalent see the Licensing Act 2003 (Welsh Language Forms) Order 2007, SI 2007/805.

6 For the prescribed fee see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, reg 6(1), Sch 2. Fees are graduated according to the rateable value of the premises: see further reg 3, Sch 1.

In respect of an application which relates to the provision of regulated entertainment only, no fee is payable if the following conditions are satisfied in respect of that application, ie that (1) in the case of an application by a proprietor of an educational institution in respect of premises that are or form part of an educational institution, the educational institution is a school or a college and the provision of regulated entertainment on the premises is carried on by the educational institution for and on behalf of the purposes of the educational institution; or (2) the application is in respect of premises that are or form part of a church hall, chapel hall or other similar building or a village hall, parish hall or community hall or other similar building: reg 9(1), (2). For meanings of 'college' and 'school' see PARA 53 note 16.

- 7 Licensing Act 2003 s 84(2).
- 8 Licensing Act 2003 s 84(3).
- 9 le under the Licensing Act 2003 s 71(6) (see PARA 88); applied by s 84(4).
- 10 See the Licensing Act 2003 s 84(4).
- 11 See the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, regs 25, 26(4), cited in PARA 53 notes 22-23, 88 note 13.
- 12 le the notices referred to in the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 25: see PARA 53 note 22.
- 13 Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 26(3).
- 14 As to the meaning of 'responsible authority' see PARA 88 note 14.
- 15 Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 27.

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

101 Application to vary club premises certificate

TEXT AND NOTES--Licensing Act 2003 ss 86A-86C (added by SI 2009/1772) provide a simplified procedure for a minor variation of a club premises certificate. A club which holds a club premises certificate may apply to the relevant licensing authority for a variation of the certificate under the following provisions instead of under Licensing Act 2003 s 84: Licensing Act 2003 s 86A(1). Such an application is subject to regulations made under the 2003 Act prescribing the form and manner of applications, the information and documents that must accompany them, the fee to be paid, and their advertisement: Licensing Act 2003 s 86A(2), (4). An application may not be made to vary a club premises certificate so as to (1) vary substantially the premises to which it relates; (2) add the supply of alcohol to members or guests as an activity authorised by the certificate; or (3) authorise (a) the supply of alcohol to members or guests at any time between 11 pm and 7 am; or (b) an increase in the amount of time on any day during which alcohol may be supplied to members or guests: Licensing Act 2003 s 86A(3).

In determining an application, the relevant licensing authority must consult such of the responsible authorities as it considers appropriate and take into account any relevant representations made by those authorities, or made by an interested party and received by the authority within 10 working days beginning on the initial day: Licensing Act 2003 s 86B(1), (2). 'Initial day' means the first working day after the day on which the authority receives the application; and 'relevant representations' means representations which are about the likely effect of the grant of the application on the

promotion of the licensing objectives (see PARA 35): Licensing Act 2003 s 86B(10). If the authority considers that (i) the variation proposed in the application could not have an adverse effect on the promotion of any of the licensing objectives; or (ii) if more than one variation is proposed, none of them, whether considered separately or together could have such an effect, it must grant the application: Licensing Act 2003 s 86B(3). In any other case the authority must reject the application: Licensing Act 2003 s 86B(4). The authority must determine the application within a specified time (see Licensing Act 2003 s 86B(5)-(9)) and must give notice of its determination to the applicant (see Licensing Act 2003 s 86C).

NOTE 5--As to the prescribed form of an application for the minor variation of club premises certificates, see Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42 reg 19A (added by SI 2009/1809).

NOTE 6--As to the fee to accompany an application for minor variation of a club premises certificate under the Licensing Act 2003 s 86A, see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79 reg 6A (added by SI 2009/1809).

TEXT AND NOTES 9, 10--The Secretary of State's duty to make regulations under the Licensing Act 2003 s 71(7) (see PARA 88) is also applied by s 81(4): Licensing Act 2003 s 81(4) (substituted by SI 2009/2999).

NOTE 15--SI 2005/42 reg 27 substituted, reg 27A added: see PARA 53.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(3) CLUB PREMISES CERTIFICATES/(v) Variation, Review and Withdrawal of Certificates/A. VARIATION OF CERTIFICATES/102. Determination of application and rights of appeal.

102. Determination of application and rights of appeal.

Where the relevant licensing authority¹ receives an application² to vary a club premises certificate³ and it is satisfied that the applicant has complied with any requirement to advertise the application⁴, then unless relevant representations are made⁵, the authority must grant the application⁶. A club premises certificate may not, however, be varied so as to vary substantially the premises⁷ to which it relates⁸.

Where relevant representations⁹ are made, the authority must hold a hearing¹⁰ to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary¹¹. Subject to the statutory requirement to include certain mandatory conditions in club premises certificates¹², and having regard to the representations, the authority must then take such of the steps set out in heads (1) and (2) below, if any, as it considers necessary for the promotion of the licensing objectives¹³. Those steps are:

- 396 (1) to modify the conditions of the certificate¹⁴;
- 397 (2) to reject the whole or part of the application¹⁵.

In discharging its duty under the above provisions¹⁶, a licensing authority may vary a club premises certificate so that it has effect subject to different conditions in respect of different parts of the premises concerned or different qualifying club activities¹⁷.

Where an application, or any part of an application, is granted, the relevant licensing authority must forthwith give a notice to that effect to the applicant, to any person who made relevant representations in respect of the application, and to the chief officer of police¹⁸ for the police area, or each police area, in which the premises are situated¹⁹. Where relevant representations²⁰ were made in respect of the application, the notice must specify the authority's reasons for its decision as to the steps, if any, to take under heads (1) and (2) above²¹. The notice must also specify the time when the variation in question takes effect²².

Where an application, or any part of an application, is rejected, the relevant licensing authority must forthwith give a notice to that effect stating its reasons for rejecting the application to the applicant, to any person who made relevant representations, and to the chief officer of police for the police area, or each police area, in which the premises are situated²³.

Where a licensing authority rejects, in whole or in part, an application to vary a club premises certificate, the club that made the application may appeal²⁴ against the decision²⁵; and where an application to vary a club premises certificate is granted, in whole or in part, the club may appeal against any decision to modify the conditions of the certificate under head (1) above²⁶. Where a person who made relevant representations²⁷ in relation to the application desires to contend that any variation ought not to have been made, or that, when varying the certificate, the licensing authority ought not to have modified²⁸ the conditions of the certificate, or ought to have modified them in a different way, he may appeal against the decision²⁹. The procedure on such an appeal, and the powers of the magistrates' court which hears it, have already been discussed³⁰.

- 1 As to the meaning of 'relevant licensing authority' see PARA 88 note 4. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.
- 2 Ie an application made in accordance with the Licensing Act 2003 s 84: see PARA 101.
- 3 As to the meaning of 'club premises certificate' see PARA 85.
- 4 Ie any requirement imposed by virtue of the Licensing Act 2003 s 84(4): see PARA 101.
- 5 Ie subject to the Licensing Act 2003 s 86(6): see the text and notes 7-8.
- 6 Licensing Act 2003 s 85(1), (2). This is subject to ss 73, 74 (mandatory conditions relating to supply of alcohol for consumption off the premises and to exhibition of films: see PARAS 92-93): s 85(7).
- 7 As to the meaning of 'premises' see PARA 27 note 12.
- 8 Licensing Act 2003 s 86(6).
- 9 'Relevant representations' means representations which: (1) are about the likely effect of the grant of the application on the promotion of the licensing objectives; and (2) meet the requirements of the Licensing Act 2003 s 85(6): s 85(5). Those requirements are: (a) that the representations are made by an interested party or responsible authority within the period prescribed under s 71(6)(c) (see PARA 88 note 16) by virtue of s 84(4) (see PARA 101); (b) that they have not been withdrawn; and (c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious: s 85(6). As to the licensing objectives see PARA 35. As to the meanings of 'interested party' and 'responsible authority' see PARA 88 notes 12, 14. Where the relevant licensing authority determines that any representations are frivolous or vexatious, it must give the person who made them its reasons for that determination: s 86(5). As to the method of notification see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 31, cited in PARA 55 note 4.
- 10 Notice of the hearing must be given to the club which has made the application under the Licensing Act 2003 s 84(1); and the notice must be accompanied by the relevant representations which have been made: Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 7, Sch 3, Table para 9. Notice must also be given to persons who have made such representations: reg 6, Sch 2, Table para 9. The hearing must be held within 20 working days beginning with the day after the end of the period during which representations may be made as prescribed under the Licensing Act 2003 s 71(6)(c) by virtue of s 84(4): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 5, Sch 1, Table para 5. As to the meaning of 'working day' see PARA 44 note 10. As to the procedure at the hearing, or when a hearing is dispensed with, see PARA 44 et seq.
- 11 Licensing Act 2003 s 85(3)(a).
- 12 Ie subject to the Licensing Act 2003 ss 73, 74: see PARAS 92-93.
- 13 Licensing Act 2003 s 85(3)(b), (7).
- 14 The conditions of the certificate are modified if any of them is altered or omitted or any new condition is added: see the Licensing Act 2003 s 85(4).
- 15 Licensing Act 2003 s 85(4).
- 16 Ie under the Licensing Act 2003 s 85(2) or (3)(b).
- 17 Licensing Act 2003 s 86(7). As to the meaning of 'qualifying club activities' see PARA 29.
- 18 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.
- 19 Licensing Act 2003 s 86(1). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.
- 20 Ie within the meaning of the Licensing Act 2003 s 85(5) (see note 9) (definition applied by s 86(8)).
- 21 Licensing Act 2003 s 86(2).

22 Licensing Act 2003 s 86(3). The time the variation takes effect is the time specified in the application or, if that time is before the applicant is given the notice, such later time as the relevant licensing authority specifies in the notice: s 86(3).

23 Licensing Act 2003 s 86(4).

24 le to a magistrates' court: see PARA 52.

25 Licensing Act 2003 Sch 5 para 10(b).

26 Licensing Act 2003 Sch 5 para 12(1), (2).

27 le within the meaning given by s 85(5) (see note 9): see Sch 5 para 12(4).

28 le under the Licensing Act 2003 s 85(3)(b): see head (1) in the text.

29 Licensing Act 2003 Sch 5 para 12(3). On such an appeal, the club that holds or held the club premises certificate is to be the respondent in addition to the licensing authority: Sch 5 para 15(3).

30 See PARA 52.

UPDATE

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

102 Determination of application and rights of appeal

TEXT AND NOTES--As to the determination of applications under the simplified procedure for a minor variation of a club premises certificate see PARA 101.

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B. REVIEW OF CERTIFICATES

103. Application for review of a club premises certificate.

Where a club holds a club premises certificate¹, an interested party², a responsible authority³ or a member of the club may apply to the relevant licensing authority⁴ for a review of the certificate⁵; and where a local authority⁶ is both the relevant licensing authority, and a responsible authority, in respect of any premises⁷, the authority may, in its capacity as responsible authority, apply under these provisions for a review of any club premises certificate in respect of the premises⁸.

The Secretary of State must by regulations:

- 398 (1) require the applicant to give a notice containing details of the application to the club and each responsible authority within such period as may be prescribed⁹;
- 399 (2) require the authority to advertise the application and invite representations relating to it to be made to the authority¹⁰;
- 400 (3) prescribe the period during which representations may be made by the club, by any responsible authority and by any interested party¹¹;
- 401 (4) require any notice under head (1) above or advertisement under head (2) above to specify that period¹².

The relevant licensing authority may, at any time, reject any ground for review specified in an application under these provisions if it is satisfied that the ground is not relevant to one or more of the licensing objectives¹³ or, in the case of an application made by a person other than a responsible authority, that the ground is frivolous or vexatious or the ground is a repetition¹⁴; and the application is to be treated as rejected to the extent that any of the grounds of the review are so rejected¹⁵.

1 As to the meaning of 'club premises certificate' see PARA 85.

2 As to the meaning of 'interested party' see PARA 88 note 12.

3 As to the meaning of 'responsible authority' see PARA 88 note 14.

4 As to the meaning of 'relevant licensing authority' see PARA 85 note 4. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

5 Licensing Act 2003 s 87(1). This is subject to regulations made by the Secretary of State as to the form etc of applications made under s 91 (see PARA 88 note 5): ss 87(2), 193. For the prescribed form of application see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 20, Sch 8. As to inspection of the premises where such an application is made see the Licensing Act 2003 s 96; and PARA 89.

6 There is no statutory definition of 'local authority' for these purposes. As to the local authorities that are licensing authorities see PARA 3; and as to local authorities generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq; **LONDON GOVERNMENT**.

7 As to the meaning of 'premises' see PARA 27 note 12.

8 Licensing Act 2003 s 89(1), (2).

9 Licensing Act 2003 s 87(3)(a). The person making the application must give notice of his application to each responsible authority by giving to each authority a copy of the application together with its accompanying documents, if any, on the same day as the day on which the application is given to the relevant licensing authority: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 27. He must also give notice to the club in whose name the club premises certificate is held and to which the application relates by giving the club a copy of the application for review together with its accompanying documents, if any, on the same day as the day on which the application for review is given to the licensing authority: reg 29.

10 Licensing Act 2003 s 87(3)(b). The prescribed method of advertising the application, and the general information which must be included, is the same as in the case of an application for a club premises certificate: see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, regs 25, 26(4), cited in PARA 53 notes 22-23, PARA 88 note 13.

11 Licensing Act 2003 s 87(3)(c). See the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 22(1)(b), cited in PARA 88 note 16.

12 Licensing Act 2003 s 87(3)(d); and see notes 9-10.

13 As to the licensing objectives see PARA 35.

14 Licensing Act 2003 s 87(4). For this purpose, a ground for review is a repetition if: (1) it is identical or substantially similar to: (a) a ground for review specified in an earlier application for review made in respect of the same club premises certificate and determined under s 88 (see PARA 104); or (b) representations considered by the relevant licensing authority in accordance with s 72 (see PARA 90), before it determined the application for the club premises certificate under that provision; and (2) a reasonable interval has not elapsed since that earlier application or that grant: s 87(5).

Where the authority rejects a ground for review under s 87(4), it must notify the applicant of its decision and, if the ground was rejected because it was frivolous or vexatious, the authority must notify him of its reasons for making that decision: s 87(6). It must give such notification in writing as soon as is reasonably practicable to the person making the application for a review: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 32.

15 Licensing Act 2003 s 87(7). Accordingly, the requirements imposed under s 87(3)(a), (b) (see heads (1), (2) in the text) and by s 88 (see PARA 104) (so far as not already met) apply only to so much (if any) of the application as has not been rejected: s 87(7).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

103 Application for review of a club premises certificate

NOTE 9--SI 2005/42 reg 27 substituted, reg 27A added: see PARA 53.

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104. Determination of application for review and rights of appeal.

Where:

- 402 (1) the relevant licensing authority¹ receives an application for review of a club premises certificate²;
- 403 (2) the applicant has complied with any requirement imposed on him with regard to giving notice³; and
- 404 (3) the authority has complied with any requirement imposed on it with regard to advertising the application⁴,

then before determining the application, the authority must hold a hearing⁵ to consider it and any relevant representations⁶. Subject to the statutory requirement to include certain mandatory conditions in a certificate⁷, the authority must, having regard to the application and to any relevant representations, take such of the steps mentioned in heads (a) to (d) below, if any, as it considers necessary for the promotion of the licensing objectives⁸. Those steps are:

- 405 (a) to modify the conditions⁹ of the certificate¹⁰;
- 406 (b) to exclude a qualifying club activity¹¹ from the scope of the certificate¹²;
- 407 (c) to suspend the certificate for a period not exceeding three months¹³;
- 408 (d) to withdraw the certificate¹⁴.

Where a local authority is both the relevant licensing authority and a responsible authority in respect of any premises¹⁵, and it has applied¹⁶, in its capacity as responsible authority, for a review of any club premises certificate in respect of the premises, it may, in its capacity as licensing authority, determine that application¹⁷.

Where a licensing authority determines an application for review it must notify the determination and its reasons for making it to the club, to the applicant, to any person who made relevant representations and to the chief officer of police¹⁸ for the police area, or each police area, in which the premises are situated¹⁹. A determination under these provisions does not have effect until the end of the period given for appealing against the decision or, if the decision is appealed against, until the appeal is disposed of²⁰.

Where an application for a review of a club premises certificate is decided under the above provisions, an appeal²¹ may be made against that decision by the applicant for the review, by the club that holds or held the club premises certificate, or by any other person who made relevant representations²² in relation to the application²³. The procedure on such an appeal, and the powers of the magistrates' court which hears it, have already been discussed²⁴.

1 As to the meaning of 'relevant licensing authority' see PARA 85 note 4. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

2 le an application made in accordance with the Licensing Act 2003 s 87: see PARA 103. As to the meaning of 'club premises certificate' see PARA 85.

3 le any requirement imposed on him by virtue of the Licensing Act 2003 s 87(3)(a) or (d): see PARA 103 at heads (1), (4).

4 le any requirement imposed on it by virtue of the Licensing Act 2003 s 87(3)(b) or (d): see PARA 103 at heads (2), (4).

5 Notice of the hearing must be given to the club which holds the club premises certificate in respect of which the application has been made; and the notice must be accompanied by the relevant representations (as defined in the Licensing Act 2003 s 88(7) (see note 6) which have been made: Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 7, Sch 3, Table para 10. Notice must also be given to persons who have made such relevant representations and to the person who has made the application under the Licensing Act 2003 s 87(1) (see PARA 103): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 6, Sch 2, Table para 10. The hearing must be held within 20 working days beginning with the day after the end of the period within which representations may be made as prescribed under the Licensing Act 2003 s 87(3)(c) (see PARA 103 at head (3)): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 5, Sch 1, Table para 10. As to the meaning of 'working day' see PARA 44 note 10. As to the procedure at the hearing see PARA 44 et seq.

6 Licensing Act 2003 s 88(1), (2). 'Relevant representations' means representations which: (1) are relevant to one or more of the licensing objectives; and (2) meet the requirements of s 88(8): s 88(7). Those requirements are: (a) that the representations are made by the club, a responsible authority or an interested party within the period prescribed under s 87(3)(c) (see PARA 103 at head (3)); (b) that they have not been withdrawn; and (c) if they are made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious: s 88(8). Where the relevant licensing authority determines that any representations are frivolous or vexatious, it must give the person who made them its reasons for that determination: s 88(9). As to the method of giving such notification see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 31, cited in PARA 55 note 4. As to the meanings of 'interested party' and 'responsible authority' see PARA 88 notes 12, 14.

7 le subject to the Licensing Act 2003 ss 73, 74 (mandatory conditions relating to supply of alcohol for consumption off the premises and to exhibition of films: see PARAS 92-93): see s 88(5).

8 Licensing Act 2003 s 88(3).

9 The conditions of the certificate are modified if any of them is altered or omitted or any new condition is added: see the Licensing Act 2003 s 88(4).

10 Licensing Act 2003 s 88(4)(a). Where the authority takes a step to modify the conditions of the certificate, it may provide that the modification is to have effect for only such period (not exceeding three months) as it may specify: s 88(6).

11 As to the meaning of 'qualifying club activity' see PARA 29.

12 Licensing Act 2003 s 88(4)(b). Where the authority takes a step to exclude a qualifying club activity from the scope of the certificate, it may provide that the exclusion is to have effect for only such period (not exceeding three months) as it may specify: s 88(6).

13 Licensing Act 2003 s 88(4)(c).

14 Licensing Act 2003 s 88(4)(d).

15 As to the meaning of 'premises' see PARA 27 note 12.

16 le under the Licensing Act 2003 s 87, by virtue of s 89(2): see PARA 103.

17 See the Licensing Act 2003 s 89(1), (3).

18 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

19 Licensing Act 2003 s 88(10). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.

20 Licensing Act 2003 s 88(11).

21 le to a magistrates' court: see PARA 52.

22 le relevant representations within the meaning of the Licensing Act 2003 s 88(7) (see note 6): see the Licensing Act 2003 Sch 5 para 13(3).

23 Licensing Act 2003 Sch 5 para 13(1), (2). On such an appeal by the applicant for the review or by any other person who made relevant representations, the club that holds or held the club premises certificate is to be the respondent in addition to the licensing authority: Licensing Act 2003 Sch 5 para 15(3).

24 See PARA 52.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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C. WITHDRAWAL OF CERTIFICATES

105. Withdrawal of club premises certificate where club ceases to be a qualifying club.

Where a club holds a club premises certificate¹ and it appears to the relevant licensing authority² that the club does not satisfy the conditions for being a qualifying club³ in relation to a qualifying club activity⁴ to which the certificate relates, the authority must give a notice to the club withdrawing the certificate, so far as relating to that activity⁵. Where, however, the only reason that the club does not satisfy the conditions for being a qualifying club in relation to the activity in question is that the club has fewer than the required number of members⁶, the notice withdrawing the certificate must state that the withdrawal does not take effect until immediately after the end of the period of three months following the date of the notice, and will not take effect if, at the end of that period, the club again has at least the required number of members⁷.

Where a justice of the peace is satisfied, on information on oath, that there are reasonable grounds for believing that a club which holds a club premises certificate does not satisfy the conditions for being a qualifying club in relation to a qualifying club activity to which the certificate relates, and that evidence of that fact is to be obtained at the premises⁸ to which the certificate relates, he may issue a warrant authorising a constable⁹ to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant, and search them¹⁰. A person who enters premises under the authority of such a warrant may seize and remove any documents relating to the business of the club in question¹¹.

Where the relevant licensing authority gives notice withdrawing a club premises certificate under the above provisions, the club which holds or held the certificate may appeal¹² against the decision to withdraw it¹³. The procedure on such an appeal, and the powers of the magistrates' court which hears it, have already been discussed¹⁴.

1 As to the meaning of 'club premises certificate' see PARA 85.

2 As to the meaning of 'relevant licensing authority' see PARA 85 note 4. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 I.e. under the Licensing Act 2003 s 61: see PARA 86.

4 As to the meaning of 'qualifying club activity' see PARA 29.

5 Licensing Act 2003 s 90(1). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.

6 The number of members required is 25 (see the Licensing Act 2003 s 62(5); and PARA 86): s 90(3).

7 Licensing Act 2003 s 90(2). Nothing in s 90(2) prevents the giving of a further notice of withdrawal under s 90 at any time: s 90(4).

8 As to the meaning of 'premises' see PARA 27 note 12.

- 9 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.
- 10 Licensing Act 2003 s 90(5).
- 11 Licensing Act 2003 s 90(6).
- 12 le to a magistrates' court: see PARA 52.
- 13 Licensing Act 2003 Sch 5 para 14.
- 14 See PARA 52.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(vi) Powers to Enter and Search Premises

106. Powers of entry and search.

Where a club premises certificate¹ has effect in respect of any premises², a constable³ may enter and search the premises if he has reasonable cause to believe: (1) that an offence of supplying or offering to supply, or being concerned in supplying or making an offer to supply, a controlled drug⁴ has been, is being, or is about to be, committed there; or (2) that there is likely to be a breach of the peace there⁵. A constable exercising this power may, if necessary, use reasonable force⁶.

If authorised by a warrant, a constable may also enter and search club premises, and remove any documents relating to the business of the club, where there are reasonable grounds for believing that the club does not satisfy the conditions for being a qualifying club⁷ in relation to a qualifying club activity⁸ to which its club premises certificate relates⁹.

An authorised person¹⁰, or a constable authorised by the chief officer of police¹¹, has powers to enter and inspect premises before the grant of a club premises certificate or the variation of such a certificate, or where an application is made¹² for review of a club premises certificate¹³.

1 As to the meaning of 'club premises certificate' see PARA 85.

2 As to the meaning of 'premises' see PARA 27 note 12.

3 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

4 Ie an offence under the Misuse of Drugs Act 1971 s 4(3)(a), (b), (c): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 772.

5 Licensing Act 2003 s 97(1).

6 Licensing Act 2003 s 97(2).

7 Ie the conditions in the Licensing Act 2003 s 61: see PARA 86.

8 As to the meaning of 'qualifying club activity' see PARA 29.

9 See the Licensing Act 2003 s 96; and PARA 89.

10 As to the meaning of 'authorised person' see PARA 89 note 5.

11 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

12 Ie under the Licensing Act 2003 s 87: see PARA 103.

13 See the Licensing Act 2003 s 96; and PARA 89.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(vii) Special Occasions with regard to Clubs

107. Relaxation of opening hours for special occasions.

Where the Secretary of State¹ considers that a period ('the celebration period') marks an occasion of exceptional international, national, or local significance, he may make a licensing hours order² providing that during the specified relaxation period³ club premises certificates⁴ have effect, to the extent that it is not already the case, as if specified times were included in the opening hours⁵. Such an order may: (1) make provision generally or only in relation to premises in one or more specified areas; (2) make different provision in respect of different days during the specified relaxation period; (3) make different provision in respect of different licensable activities⁶.

Before making such an order, the Secretary of State must consult such persons as he considers appropriate⁷.

1 As to the Secretary of State see PARA 2.

2 Licensing Act 2003 s 172(1).

3 'Relaxation period' means: (1) if the celebration period does not exceed four days, that period; or (2) any part of that period not exceeding four days; and 'specified', in relation to a licensing hours order, means specified in the order: Licensing Act 2003 s 172(5).

4 As to the meaning of 'club premises certificate' see PARA 85.

5 Licensing Act 2003 s 172(2). Similar provision may be made in relation to premises licences: see PARA 84. For these purposes, 'opening hours' means, in relation to a club premises certificate, the times during which the premises may be used for qualifying club activities in accordance with the certificate: s 172(5). As to the meaning of 'qualifying club activities' see PARA 29; and as to the meaning of 'premises' see PARA 27 note 12.

6 Licensing Act 2003 s 172(3). As to licensable activities see PARA 28.

7 Licensing Act 2003 s 172(4).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(4) TEMPORARY EVENT NOTICES

108. Temporary event notices; in general.

A licensable activity¹ is a 'permitted temporary activity' by virtue of Part 5 of the Licensing Act 2003² if:

- 409 (1) it is carried on in accordance with a temporary event notice³; and
- 410 (2) the following conditions are satisfied⁴:
- 19
- 29. (a) that the statutory requirements with regard to acknowledgement of the notice⁵ and notification of the police⁶ are met in relation to the notice⁷;
- 30. (b) that the notice has not been withdrawn under Part 5 of that Act⁸; and
- 31. (c) that no counter-notice has been given⁹ in respect of the notice¹⁰.
- 20

Where it is proposed to use premises¹¹ for one or more licensable activities during a period not exceeding 96 hours¹², an individual may give to the relevant licensing authority¹³ notice of that proposal (a 'temporary event notice')¹⁴. An individual may not give a temporary event notice unless he is aged 18 or over¹⁵.

A temporary event notice must be in the prescribed form¹⁶ and contain:

- 411 (i) a statement of specified matters¹⁷;
- 412 (ii) where the relevant licensable activities¹⁸ include the supply of alcohol, a statement that it is a condition of using the premises for such supplies that all such supplies are made by or under the authority of the premises user¹⁹; and
- 413 (iii) such other information as may be prescribed by regulations made by the Secretary of State²⁰.

The temporary event notice must be given to the relevant licensing authority, in duplicate, no later than ten working days²¹ before the day on which the event period begins, and must be accompanied by the prescribed fee²².

There must be a minimum period of 24 hours between temporary events held on the same premises by a premises user, or held by that user and another person who is related to, associated with or in business with that user²³.

Where a licensing authority receives a temporary event notice, in duplicate, in accordance with Part 5 of the Licensing Act 2003, it must acknowledge receipt of the notice by sending or delivering one notice to the premises user either before the end of the first working day following the day on which it was received, or, if the day on which it was received was not a working day, before the end of the second working day following that day²⁴. The authority must mark on the notice to be returned under the above provision an acknowledgment of the receipt in the prescribed form²⁵. These requirements do not, however, apply where, before the time by which the notice must be returned, a counter-notice has been sent or delivered to the premises user²⁶ in relation to the temporary event notice²⁷.

A temporary event notice may be withdrawn by the premises user giving the relevant licensing authority a notice to that effect no later than 24 hours before the beginning of the event period specified in the temporary event notice²⁸.

1 As to licensable activities see PARA 28.

2 Ie the Licensing Act 2003 Pt 5 (ss 98-110): see the text and notes 3-28; and PARA 109 et seq.

3 Ie a notice given in accordance with the Licensing Act 2003 s 100: see the text and notes 11-22.

4 Licensing Act 2003 s 98(1).

5 Ie the requirements of the Licensing Act 2003 s 102 (see the text and notes 24-27).

6 Ie the requirements of the Licensing Act 2003 s 104(1): see PARA 109.

7 Licensing Act 2003 s 98(2).

8 Licensing Act 2003 s 98(3). As to withdrawal see s 103; and the text and note 28.

9 Ie under the Licensing Act 2003 Pt 5. As to counter-notices see s 105; and PARA 109.

10 Licensing Act 2003 s 98(4).

11 As to the meaning of 'premises' see PARA 27 note 12.

12 The Secretary of State may, by order, amend the Licensing Act 2003 s 100(1) so as to substitute any period for the period for the time being specified there: s 100(8)(a). At the date at which this volume states the law, no such order had been made. As to the Secretary of State see PARA 2.

13 In the Licensing Act 2003 Pt 5, references to the 'relevant licensing authority', in relation to any premises, are references to: (1) the licensing authority in whose area the premises are situated; or (2) where the premises are situated in the areas of two or more licensing authorities, each of those authorities: s 99. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under s 182: see s 4; and PARA 35. As to the Secretary of State's duty to issue guidance under s 182 see PARA 2.

14 Licensing Act 2003 s 100(1). This provision was designed to replace the former regime of 'occasional' licences, occasional permissions and occasional public entertainment licences for individual events. A 'temporary event notice' can authorise licensable activities for up to 500 persons over a period not exceeding 96 hours. Different limits for the number of such notices that may be sought apply, depending upon whether or not the person holding the temporary event notice holds a personal licence and also upon the frequency with which the particular premises designated are used for these purposes.

15 Licensing Act 2003 s 100(3).

16 For the prescribed form of notice see the Licensing Act 2003 (Permitted Temporary Activities) (Notices) Regulations 2005, SI 2005/2918, reg 3(1), Sch 1. 'Prescribed' means prescribed by regulations made by the Secretary of State: s 193.

17 Ie a statement of the matters mentioned in the Licensing Act 2003 s 100(5): s 100(4)(a). Those matters are: (1) the licensable activities to which the proposal mentioned in s 100(1) relates ('the relevant licensable activities'); (2) the period (not exceeding 96 hours) during which it is proposed to use the premises for those activities ('the event period'); (3) the times during the event period when the premises user proposes that those licensable activities take place; (4) the maximum number of persons (being a number less than 500) which the premises user proposes should, during those times, be allowed on the premises at the same time; (5) where the relevant licensable activities include the supply of alcohol, whether supplies are proposed to be for consumption on the premises or off the premises, or both; and (6) such other matters as may be prescribed: s 100(5)(a)-(f). As to the prescribed matters see the Licensing Act 2003 (Permitted Temporary Activities) (Notices) Regulations 2005, SI 2005/2918, reg 3(2). The Secretary of State may, by order, amend (a) the Licensing Act 2003 s 100(5) (b) (see head (2) above) so as to substitute any period for the period for the time being specified there; and (b) s 100(5)(d) (see head (4) above) so as to substitute any number for the number for the time being specified there: s 100(8)(a), (b). At the date at which this volume states the law, no such order had been made. In s 100, 'supply of alcohol' means: (a) the sale by retail of alcohol; or (b) the supply of alcohol by or on behalf of a club

to, or to the order of, a member of the club: s 100(9). As to the meanings of 'sale by retail' and 'alcohol' see PARA 30; and as to supply to members or guests of a club see s 64; and PARA 86 at heads (a)-(c).

18 See note 17 head (1).

19 Licensing Act 2003 s 100(4)(b), (6). In the Licensing Act 2003, the 'premises user', in relation to a temporary event notice, is the individual who gave the notice: s 100(2).

20 Licensing Act 2003 ss 100(4)(c), 193. For the prescribed information see the Licensing Act 2003 (Permitted Temporary Activities) (Notices) Regulations 2005, SI 2005/2918, reg 3(3).

21 As to the meaning of 'working day' see PARA 44 note 10.

22 Licensing Act 2003 s 100(7). At the date at which this volume states the law, the prescribed fee was £21: see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, Sch 6.

23 See the Licensing Act 2003 s 101. A temporary event notice ('notice A') given by an individual ('the relevant premises user') is void if the event period specified in it does not (1) end at least 24 hours before the event period specified in any other temporary event notice given by the relevant premises user in respect of the same premises before or at the same time as notice A; or (2) begin at least 24 hours after the event period specified in any other such notice: s 101(1). For these purposes: (a) any temporary event notice in respect of which a counter-notice has been given under Pt 5 or which has been withdrawn under s 103 is to be disregarded; (b) a temporary event notice given by an individual who is an associate of the relevant premises user is to be treated as a notice given by the relevant premises user; (c) a temporary event notice ('notice B') given by an individual who is in business with the relevant premises user is to be treated as a notice given by the relevant premises user if (i) that business relates to one or more licensable activities; and (ii) notice A and notice B relate to one or more licensable activities to which the business relates (although not necessarily the same activity or activities); (d) two temporary event notices are in respect of the same premises if the whole or any part of the premises in respect of which one of the notices is given includes or forms part of the premises in respect of which the other notice is given: s 101(2). An individual is an associate of another person for the purposes of s 101 if that individual is (A) the spouse or civil partner of that person; (B) a child, parent, grandchild, grandparent, brother or sister of that person; (C) an agent or employee of that person; or (D) the spouse or civil partner of a person within head (B) or head (C) above; and a person living with another as that person's husband or wife is to be treated as that person's spouse: s 101(3), (4) (amended by the Civil Partnership Act 2004 Sch 27 para 170).

The Licensing Act 2003 s 101 prevents a premises user holding numerous consecutive temporary events as a means of avoiding an application for a premises licence.

24 Licensing Act 2003 s 102(1).

25 Licensing Act 2003 s 102(2). For the prescribed form of acknowledgment of receipt see the Licensing Act 2003 (Permitted Temporary Activities) (Notices) Regulations 2005, SI 2005/2918, reg 4.

26 Ie under the Licensing Act 2003 s 107: see PARA 110.

27 Licensing Act 2003 s 102(3).

28 Licensing Act 2003 s 103(1). Nothing in s 102 or in ss 104-107 (see PARAS 109-110) applies in relation to a notice withdrawn in accordance with s 103: s 103(2).

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

108 Temporary event notices; in general

TEXT AND NOTE 22--Requirement for notice to be given in duplicate omitted: Licensing Act 2003 s 100(7) (amended by SI 2009/2999).

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109. Police objections.

No later than ten working days¹ before the beginning of the event period² proposed in the temporary event notice³, the premises user⁴ must give a copy of the notice to the relevant chief officer of police⁵. Where a chief officer of police who received such a copy notice is satisfied that allowing the premises⁶ to be used in accordance with the notice would undermine the crime prevention objective⁷, he must give a notice (an 'objection notice') to the relevant licensing authority⁸ and to the premises user, stating his reasons, no later than 48 hours after receipt of the copy of the temporary event notice⁹.

Where an objection notice is given in respect of a temporary event notice, the relevant licensing authority must:

- 414 (1) hold a hearing¹⁰ to consider the objection notice unless the premises user, the chief officer of police who gave the objection notice and the authority agree that a hearing is unnecessary¹¹;
- 415 (2) having regard to the objection notice, give the premises user a counter-notice¹² if it considers it necessary for the promotion of the crime prevention objective to do so¹³.

A decision must be made under head (2) above at least 24 hours before the beginning of the event period specified in the temporary event notice¹⁴.

The relevant licensing authority must, in a case where it decides not to give a counter-notice under these provisions, give the premises user and the relevant chief officer of police notice of the decision¹⁵, within the time limit¹⁶ referred to above¹⁷. In any other case, the authority must, within that time limit¹⁸, give the premises user the counter-notice and a notice stating the reasons for its decision, and give the relevant chief officer of police a copy of both of those notices¹⁹.

Where a temporary event notice is given²⁰ and a chief officer of police gives an objection notice²¹, then where the relevant licensing authority gives a counter-notice under the above provisions²², the premises user may appeal²³ against that decision²⁴. Where that authority decides not to give such a counter-notice, the chief officer of police may appeal against that decision²⁵. No such appeal may, however, be brought later than five working days before the day on which the event period specified in the temporary event notice begins²⁶. The procedure on such an appeal, and the powers of the magistrates' court which hears it, have already been discussed²⁷.

Where a chief officer of police has given an objection notice in respect of a temporary event notice and the objection notice has not been withdrawn, then at any time before a hearing is held or dispensed with under heads (1) and (2) above, the chief officer of police may, with the agreement of the premises user, modify the temporary event notice by making changes to the notice returned to the premises user²⁸ by way of acknowledgment²⁹. Where the premises are situated in more than one police area, the chief officer of police may so modify the temporary event notice only with the consent of the chief officer of police for the other police area or each of the other police areas in which the premises are situated³⁰. Where a temporary event notice is so modified, the objection notice³¹ is to be treated for the purposes of the Licensing Act 2003

as having been withdrawn from the time the temporary event notice is modified³², and from that time:

- 416 (a) the 2003 Act has effect as if the temporary event notice given³³ had been the notice as so modified; and
- 417 (b) to the extent that the statutory conditions³⁴ are satisfied in relation to the unmodified notice they are to be treated as satisfied in relation to the notice as so modified³⁵.

A copy of the temporary event notice as so modified must be sent or delivered by the chief officer of police to the relevant licensing authority before a hearing is held or dispensed with under heads (1) and (2) above³⁶.

1 As to the meaning of 'working day' see PARA 44 note 10.

2 As to the meaning of 'event period' see PARA 108 note 17.

3 As to the meaning of 'temporary event notice' see PARA 108.

4 As to the meaning of 'premises user' see PARA 108 note 19.

5 Licensing Act 2003 s 104(1). For these purposes, 'relevant chief officer of police' means (1) where the premises are situated in one police area, the chief officer of police for that area; and (2) where the premises are situated in two or more police areas, the chief officer of police for each of those areas: ss 104(5), 105(7). As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

6 As to the meaning of 'premises' see PARA 27 note 12.

7 As to the meaning of 'the crime prevention objective' see PARA 35.

8 As to the meaning of 'relevant licensing authority' see PARA 108 note 13. Where the premises are situated in the area of more than one licensing authority, the functions conferred on the relevant licensing authority by the Licensing Act 2003 s 105 (see the text and notes 10-19) must be exercised by those authorities jointly: s 105(5). As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

9 Licensing Act 2003 s 104(2), (3). This does not apply at any time after the relevant chief officer of police has received a copy of a counter-notice under s 107 (see PARA 110) in respect of the temporary event notice: s 104(4).

10 Notice of the hearing must be given to the premises user and to each chief officer of police who has given notice under the Licensing Act 2003 s 104(2): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 6, Sch 2, Table para 11. Such notice must be given no later than two working days before the day or the first day on which the hearing is to be held: reg 6(2)(b). The hearing must be held within seven working days beginning with the day after the end of the period within which a chief officer of police may give a notice under the Licensing Act 2003 s 104(2): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 5, Sch 1 para 11. A party must give notice to the authority, no later than one working day before the day or the first day on which the hearing is to be held, stating whether he intends to attend or be represented at the hearing and whether he considers a hearing to be unnecessary: reg 8(3)(b). As to the procedure at the hearing, or when a hearing is dispensed with, see PARA 44 et seq.

11 As to modification of the temporary event notice before the hearing is held or dispensed with see s 106; and the text and notes 28-36.

12 Is a counter-notice under the Licensing Act 2003 s 105.

13 Licensing Act 2003 s 105(1), (2). Section 105 does not apply (1) if the objection notice has been withdrawn, whether by virtue of s 106 (see the text and notes 28-36) or otherwise; (2) if the premises user has been given a counter-notice under s 107 (see PARA 110): s 105(6).

- 14 Licensing Act 2003 s 105(4). Failure to do so will mean that the premises user will be unable to proceed with the event.
- 15 Licensing Act 2003 s 105(3)(a).
- 16 Ie at least 24 hours before the beginning of the event period specified in the temporary event notice: see the Licensing Act 2003 s 105(4).
- 17 See the Licensing Act 2003 s 105(4).
- 18 See note 16.
- 19 Licensing Act 2003 s 105(3)(b), (4).
- 20 Ie under the Licensing Act 2003 s 100: see PARA 108.
- 21 Ie in accordance with the Licensing Act 2003 s 104(2): see the text and notes 6-9.
- 22 Ie under the Licensing Act 2003 s 105(3): see the text and notes 15-19.
- 23 Ie to a magistrates' court: see PARA 52.
- 24 Licensing Act 2003 Sch 5 para 16(1), (2), (8).
- 25 Licensing Act 2003 Sch 5 para 16(3). On such an appeal, the premises user is to be the respondent in addition to the licensing authority: Sch 5 para 16(7).
- 26 Licensing Act 2003 Sch 5 para 16(6).
- 27 See PARA 52.
- 28 Ie the notice returned under the Licensing Act 2003 s 102: see PARA 108.
- 29 See the Licensing Act 2003 s 106(1), (2). Section 106 does not apply if a counter-notice has been given under s 107 (see PARA 110): s 106(6).
- 30 Licensing Act 2003 s 106(5).
- 31 Ie the objection notice within the meaning of the Licensing Act 2003 s 104(2) (see the text and notes 6-9): see s 106(7).
- 32 Licensing Act 2003 s 106(3)(a).
- 33 See note 20.
- 34 Ie the conditions of the Licensing Act 2003 s 98: see PARA 108.
- 35 Licensing Act 2003 s 106(3)(b).
- 36 Licensing Act 2003 s 106(4).

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

109 Police objections

TEXT AND NOTES 1-5--Where the premises user gave the temporary event notice to the relevant licensing authority by means of a relevant electronic facility, the 2003 Act s 104(1) does not apply and the relevant licensing authority must give a copy of the notice to the relevant chief officer of police no later than the end of the first working day after the day on which the notice was given to the relevant licensing authority: Licensing Act 2003 s 104(1A) (added by SI 2009/2999). For the meaning of 'relevant electronic facility' see PARA 53.

NOTE 9--Licensing Act 2003 s 104(2), (3) amended: SI 2009/2999.

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110. Limits on temporary event notices.

Where a licensing authority¹ receives a temporary event notice² ('notice A') in respect of any premises³ ('the relevant premises'), and is satisfied that either:

- 418 (1) the relevant premises user⁴ holds a personal licence⁵, and has already given at least 50⁶ temporary event notices⁷ in respect of event periods⁸ wholly or partly within the same year⁹ as the event period specified in notice A¹⁰; or
- 419 (2) the relevant premises user does not hold a personal licence, and has already given at least five temporary event notices in respect of such event periods¹¹; or
- 420 (3) at least 12 temporary event notices have already been given which are in respect of the same premises as notice A¹², and specify as the event period a period wholly or partly within the same year as the event period specified in notice A¹³; or
- 421 (4) in any year in which the event period specified in notice A, or any part of it, falls, more than 15 days¹⁴ are days on which one or more of the following fall:
 - 21 32. (a) that event period or any part of it;
 33. (b) an event period specified in a temporary event notice already given in respect of the same premises as notice A or any part of such a period¹⁵,

22

the authority must give the premises user ('the relevant premises user') a counter-notice under these provisions¹⁶ stating that it is satisfied that, if the proposed activities were to take place, one of the permitted limits set out in heads (1) to (4) above would be exceeded¹⁷. Such a counter-notice must be in the prescribed form¹⁸ and given to the premises user in the prescribed manner¹⁹; and no such counter-notice may be given later than 24 hours before the beginning of the event period specified in notice A²⁰.

Where a licensing authority gives a counter-notice under these provisions it must, forthwith, send a copy of that notice to the chief officer of police²¹ for the police area, or each of the police areas, in which the relevant premises are situated²².

The general prohibition on the sale of alcohol at motorway and certain other service areas and garage forecourts also applies to temporary event notices²³.

1 As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

2 As to the meaning of 'temporary event notice' see PARA 108.

3 As to the meaning of 'premises' see PARA 27 note 12.

4 As to the meaning of 'premises user' see PARA 108 note 19.

5 As to personal licences see PARA 115 et seq.

6 The Secretary of State may, by order, amend the Licensing Act 2003 s 107(2)(b), (3)(b), (4) or (5) (see heads (1)-(4) in the text) so as to substitute any number for the number for the time being specified there: s 107(12). At the date at which this volume states the law, no such order had been made.

7 In determining for the purposes of the Licensing Act 2003 s 107(2) or (3) (see heads (1)-(2) in the text) the number of temporary event notices given by the relevant premises user: (1) a temporary event notice given by an individual who is an associate of the relevant premises user is to be treated as a notice given by the relevant premises user; (2) a temporary event notice ('notice B') given by an individual who is in business with the relevant premises user is to be treated as a notice given by the relevant premises user if: (a) that business relates to one or more licensable activities; and (b) notice A and notice B relate to one or more licensable activities to which the business relates (but not necessarily the same activity or activities): s 107(10). As to the meaning of 'associate' see s 101(3), (4); and PARA 108 note 23 (definition applied by s 107(13)(d)).

8 As to the meaning of 'event period' see PARA 108 note 17.

9 For these purposes, 'year' means calendar year: Licensing Act 2003 s 107(13)(b). If the event period in notice A straddles two years, s 107(2), (3), (4) (see heads (1)-(3) in the text) applies separately in relation to each of those years: s 107(6).

10 See the Licensing Act 2003 s 107(2). In determining whether s 107(2), (3), (4) or (5) (see heads (1)-(4) in the text) applies, any temporary event notice in respect of which a counter-notice has been given under s 107 or s 105 (see PARA 109) is to be disregarded: s 107(9).

11 See the Licensing Act 2003 s 107(3). See also s 107(6), (9), (12), cited in notes 6, 9, 10.

12 For these purposes, a temporary event notice is in respect of the same premises as notice A if it is in respect of the whole or any part of the relevant premises or premises which include the whole or any part of those premises: s 107(13)(a).

13 See the Licensing Act 2003 s 107(4). See also s 107(6), (9), (12), cited in notes 6, 9, 10.

14 For these purposes, 'day' means a period of 24 hours beginning at midnight: Licensing Act 2003 s 107(13)(c).

15 See the Licensing Act 2003 s 107(5). See also s 107(6), (9), (12), cited in notes 6, 9, 10.

16 Licensing Act 2003 s 107(1).

17 See the Licensing Act 2003 (Permitted Temporary Activities) (Notices) Regulations 2005, SI 2005/2918, reg 5, Sch 2. There is no statutory right of appeal against such a counter-notice.

18 For the prescribed form of counter-notice see the Licensing Act 2003 (Permitted Temporary Activities) (Notices) Regulations 2005, SI 2005/2918, reg 5, Sch 2.

19 Licensing Act 2003 s 107(7). 'Prescribed' means prescribed by regulations made by the Secretary of State: s 193. A counter-notice is given in the prescribed manner if it is (1) delivered to the relevant premises user in person; (2) left at the appropriate address; (3) sent to that address by ordinary post; or (4) sent by email to an appropriate email address: Licensing Act 2003 (Permitted Temporary Activities) (Notices) Regulations 2005, SI 2005/2918, reg 6. For these purposes: (a) 'appropriate address' in relation to a counter-notice means: (i) the postal address indicated in section 1(8) of the temporary event notice in respect of which the counter-notice is given; or (ii) if there is no such address the postal address indicated in section 1(6) of the notice; (b) 'appropriate email address' in relation to a counter-notice means (i) an email address indicated in section 1(9) of the temporary event notice in respect of which the counter-notice is given; or (ii) if sections 1(8) and 1(9) of the notice have not been completed, an email address indicated in section 1(7) of the notice; and (c) 'ordinary post' means ordinary prepaid first-class or second-class post (with or without special arrangements for delivery): reg 2(b), (c), (f). For the prescribed form of temporary event notice see reg 3, Sch 1.

20 Licensing Act 2003 s 107(8).

21 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

22 Licensing Act 2003 s 107(11).

23 See the Licensing Act 2003 s 176, cited in PARA 57.

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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111. Right of entry where temporary event notice given.

A constable¹ or an authorised officer² may, at any reasonable time, enter the premises to which a temporary event notice³ relates to assess the likely effect of the notice on the promotion of the crime prevention objective⁴. An authorised officer exercising this power must, if so requested, produce evidence of his authority to exercise the power⁵.

A person commits an offence if he intentionally obstructs an authorised officer exercising the above power⁶.

1 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

2 For these purposes, 'authorised officer' means: (1) an officer of the licensing authority in whose area the premises are situated; or (2) if the premises are situated in the area of more than one licensing authority, an officer of any of those authorities, authorised for the purposes of the Licensing Act 2003: s 108(5). As to the meaning of 'premises' see PARA 27 note 12.

3 As to the meaning of 'temporary event notice' see PARA 108.

4 Licensing Act 2003 s 108(1). As to the meaning of 'the crime prevention objective' see PARA 35.

5 Licensing Act 2003 s 108(2).

6 Licensing Act 2003 s 108(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 108(4). As to the standard scale see PARA 17 note 21.

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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112. Duty to keep and produce temporary event notice.

Whenever premises¹ are being used for one or more licensable activities² which are or are purported to be permitted temporary activities³ by virtue of Part 5 of the Licensing Act 2003⁴, the premises user⁵ must either: (1) secure that a copy of the temporary event notice⁶ is prominently displayed at the premises⁷; or (2) meet the requirements of head (a) and head (b) below⁸. Those requirements are that the premises user must:

- 422 (a) secure that the temporary event notice is kept at the premises in his custody, or in the custody of a person who is present and working at the premises and whom he has nominated for these purposes⁹; and
- 423 (b) secure that, where the temporary event notice is in the custody of a person so nominated, a notice specifying that fact and the position held at the premises by that person is prominently displayed at the premises¹⁰.

The premises user commits an offence if he fails, without reasonable excuse, to comply with the above requirements¹¹.

Where the temporary event notice is not displayed as mentioned in head (1) above, and no notice is displayed as mentioned in head (b) above, a constable¹² or authorised officer¹³ may require the premises user to produce the temporary event notice for examination¹⁴. Where a notice is displayed as mentioned in head (b) above, a constable or authorised officer may require the person specified in that notice to produce the temporary event notice for examination¹⁵. An authorised officer exercising either of the powers so conferred must, if so requested, produce evidence of his authority to exercise that power¹⁶. A person commits an offence if he fails, without reasonable excuse, to produce a temporary event notice in accordance with the above requirements¹⁷.

1 As to the meaning of 'premises' see PARA 27 note 12.

2 As to licensable activities see PARA 28.

3 As to the meaning of 'permitted temporary activity' see PARA 108.

4 Ie by virtue of the Licensing Act 2003 Pt 5 (ss 98-110): see PARAS 108-111; the text and notes 5-17; and PARA 113.

5 As to the meaning of 'premises user' see PARA 108 note 19.

6 As to the meaning of 'temporary event notice' see PARA 108.

7 Licensing Act 2003 s 109(1), (2)(a).

8 Licensing Act 2003 s 109(1), (2)(b).

9 Licensing Act 2003 s 109(3)(a).

10 Licensing Act 2003 s 109(3)(b).

11 Licensing Act 2003 s 109(4). The requirements referred to in the text are those of s 109(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 109(9). As to the standard scale see PARA 17 note 21.

12 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

13 For these purposes, 'authorised officer' has the meaning given in the Licensing Act 2003 s 108(5) (see PARA 111 note 2): s 109(10).

14 Licensing Act 2003 s 109(5).

15 Licensing Act 2003 s 109(6).

16 Licensing Act 2003 s 109(7).

17 Licensing Act 2003 s 109(8). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 109(9).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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113. Theft, loss etc of temporary event notice.

Where a temporary event notice¹ acknowledged by a licensing authority² is lost, stolen, damaged or destroyed, the premises user³ may apply to the licensing authority which acknowledged the notice, or, if there is more than one such authority, to any of them, for a copy of the notice⁴; but no such application may be made more than one month after the end of the event period⁵ specified in the notice⁶. The application must be accompanied by the prescribed fee⁷.

Where a licensing authority receives such an application, it must issue the premises user with a copy of the notice, certified by the authority to be a true copy, if it is satisfied that the notice has been lost, stolen, damaged or destroyed, and that where it has been lost or stolen, the premises user has reported that loss or theft to the police⁸. The copy so issued must be a copy of the notice in the form in which it existed immediately before it was lost, stolen, damaged or destroyed⁹; and the Licensing Act 2003 applies in relation to a copy so issued as it applies in relation to an original notice¹⁰.

1 As to the meaning of 'temporary event notice' see PARA 108.

2 Is acknowledged under the Licensing Act 2003 s 102: see PARA 108. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 As to the meaning of 'premises user' see PARA 108 note 19.

4 Licensing Act 2003 s 110(1).

5 As to the meaning of 'event period' see PARA 108 note 17.

6 Licensing Act 2003 s 110(2).

7 Licensing Act 2003 s 110(3). 'Prescribed' means prescribed by regulations made by the Secretary of State: s 193. At the date at which this volume states the law, the prescribed fee was £10.50: see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, Sch 6.

8 Licensing Act 2003 s 110(4).

9 Licensing Act 2003 s 110(5).

10 Licensing Act 2003 s 110(6).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

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(5) PERSONAL LICENCES

(i) Introduction

114. Meaning of 'personal licence'.

'Personal licence'¹ means, in the Licensing Act 2003, a licence which:

- 424 (1) is granted by a licensing authority² to an individual; and
- 425 (2) authorises that individual to supply alcohol³, or authorise the supply of alcohol, in accordance with a premises licence⁴;

and the reference in head (2) above to an individual supplying alcohol is to him either selling alcohol by retail⁵, or supplying alcohol by or on behalf of a club to, or to the order of, a member of the club⁶.

1 The requirement for an individual to hold a personal licence arises from s 19, which provides that every premises licence authorising the sale of alcohol must include conditions (1) that no supply of alcohol may be made under the premises licence: (a) at a time when there is no designated premises supervisor in respect of the premises licence; or (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended; and (2) that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence: see s 19(1)-(3); and PARA 57.

2 As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 As to the meaning of 'alcohol' see PARA 30.

4 Licensing Act 2003 s 111(1). As to the meaning of 'premises licence' see PARA 53 note 1.

5 As to the meaning of 'sale by retail' see PARA 30.

6 Licensing Act 2003 s 111(2). As to supply to members or guests of a club see PARA 85 at head (a); and as to such supplies generally see s 64; and PARA 86 at heads (a)-(c).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(ii) Grant or Renewal of Personal Licence

115. Application for grant of licence.

An individual may apply for the grant of a personal licence¹. Such an application: (1) must, if the applicant is ordinarily resident in the area of a licensing authority², be made to that authority; and (2) may, in any other case, be made to any licensing authority³. This is subject to regulations made by the Secretary of State⁴ as to the form⁵ of applications and notices and the fees⁶ which must accompany them⁷.

An application⁸ must be accompanied by the following documents:

- 426 (a) two photographs of the applicant, which must be:
 - 23 34. (i) taken against a light background so that the applicant's features are distinguishable and contrast against the background;
 - 35. (ii) 45 millimetres by 35 millimetres;
 - 36. (iii) full face uncovered and without sunglasses and, unless the applicant wears a head covering due to his religious beliefs, without a head covering;
 - 37. (iv) on photographic paper; and
 - 38. (v) one of which is indorsed with a statement verifying the likeness of the photograph to the applicant by a solicitor, notary, a person of standing in the community⁹ or any individual with a professional qualification; and
- 24 427 (b) either a criminal conviction certificate¹⁰, a criminal record certificate¹¹ or the results of a subject access search under the Data Protection Act 1998 of the Police National Computer by the National Identification Service¹²; in any case such a certificate or search results must be issued no earlier than one calendar month before the giving of the application to the relevant licensing authority; and
- 428 (c) a declaration by the applicant, in the prescribed form¹³, that either he has not been convicted of a relevant offence¹⁴ or a foreign offence¹⁵ or that he has been convicted of a relevant offence or a foreign offence accompanied by details of the nature and date of the conviction and any sentence imposed on him in respect of it¹⁶.

Except in the case of certain prescribed persons¹⁷, an application for the grant of a personal licence¹⁸ must also be accompanied by the licensing qualification¹⁹ of the applicant²⁰.

An application must be given in writing²¹; but that requirement is satisfied in a case where:

- 429 (A) the text of the application is transmitted by electronic means, is capable of being accessed by the recipient, is legible in all material respects²² and is capable of being read and reproduced in legible written form and used for subsequent reference;
- 430 (B) the person to whom the application is to be given has agreed in advance that an application may be given to them by those means; and

431 (c) forthwith on sending the text of the application by electronic means, the application is given to the recipient in writing²³.

An individual who makes an application for the grant of a personal licence under the above provisions ('the initial application') may not make another such application until the initial application has been determined by the licensing authority to which it was made or has been withdrawn²⁴. A personal licence is void if, at the time it is granted, the individual to whom it is granted already holds a personal licence²⁵.

1 Licensing Act 2003 s 117(1)(a). The application cannot be granted unless the individual is aged 18 or over: see s 120(2)(a), cited in PARA 118. As to the meaning of 'personal licence' see PARA 114.

2 As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 Licensing Act 2003 s 117(2).

4 The regulations under the Licensing Act 2003 s 133 (form etc of applications and notices under Pt 6 (ss 111-135)): see ss 117(5), 193. In relation to any application under s 117 or notice under Pt 6, regulations may prescribe its form, the manner in which it is to be made or given, and the information and documents that must accompany it: 133(1). Regulations may also (1) require applications under s 117 or s 126 (see PARA 120) or notices under s 127 (see PARA 125) to be accompanied by a fee; and (2) prescribe the amount of the fee: s 133(2).

5 For the prescribed form of application for a personal licence see the Licensing Act 2003 (Personal licences) Regulations 2005, SI 2005/41, reg 6(1), Sch 1. The relevant licensing authority (1) must provide on request the forms listed in Schs 1-4 printed on paper; or (2) in a case where the relevant licensing authority maintains a website, it may provide electronic copies of those forms on such a website: reg 10. A licensing authority must not reject any application by reason only of the fact that it is given on a form provided otherwise than from the relevant licensing authority but which complies with the requirements of the Licensing Act 2003 (Personal licences) Regulations 2005, SI 2005/41: reg 11. For the Welsh language equivalent of the prescribed form see the Licensing Act 2003 (Welsh Language Forms) Order 2007, SI 2007/805.

6 At the date at which this volume states the law, the prescribed fee was £37: see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, Sch 6.

7 Licensing Act 2003 s 117(5).

8 The application made under the Licensing Act 2003 (Personal licences) Regulations 2005, SI 2005/41, reg 6(1) (see note 5) or reg 6(2) (application for renewal of licence: see PARA 116).

9 'Person of standing in the community' includes a bank or building society official, a police officer, a civil servant or a minister of religion: Licensing Act 2003 (Personal licences) Regulations 2005, SI 2005/41, reg 2(1).

10 The criminal conviction certificate issued under the Police Act 1997 s 112: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 711.

11 The criminal record certificate issued under the Police Act 1997 s 113A: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 712.

12 As to such subject access searches see **CONFIDENCE AND DATA PROTECTION**.

13 For the prescribed form of declaration see the Licensing Act 2003 (Personal licences) Regulations 2005, SI 2005/41, Sch 3.

14 As to the meaning of 'relevant offence' see PARA 117.

15 As to the meaning of 'foreign offence' see PARA 117 note 3.

16 Licensing Act 2003 (Personal licences) Regulations 2005, SI 2005/41, reg 7(1).

17 le persons prescribed for the purposes of the Licensing Act 2003 s 120(2)(b): see the Licensing Act 2003 (Personal licences) Regulations 2005, SI 2005/41, reg 4; and PARA 118.

18 le an application under the Licensing Act 2003 (Personal licences) Regulations 2005, SI 2005/41, reg 6(1): see note 5.

19 As to the meaning of 'licensing qualification' see PARA 118 note 3.

20 Licensing Act 2003 (Personal licences) Regulations 2005, SI 2005/41, reg 7(2).

21 Licensing Act 2003 (Personal licences) Regulations 2005, SI 2005/41, reg 9(1).

22 'Legible in all material respects' means that the information contained in the application is available to the recipient to no lesser extent than it would be if it were given by means of a document in written form: Licensing Act 2003 (Personal licences) Regulations 2005, SI 2005/41, reg 2(1).

23 Licensing Act 2003 (Personal licences) Regulations 2005, SI 2005/41, reg 9(2). Where the text of the application is transmitted by electronic means, the giving of the application is effected at the time the requirements of head (A) in the text are satisfied, provided that where any application is required to be accompanied by a fee or any document that application is not to be treated as given until the fee or document has been received by the relevant licensing authority: reg 9(3).

24 Licensing Act 2003 s 118(1).

25 Licensing Act 2003 s 118(2).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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116. Application for renewal of licence.

An individual may apply for the renewal of a personal licence¹ held by him². Such an application must be made to the relevant licensing authority³ and must be accompanied by the personal licence or, if that is not practicable, by a statement of the reasons for the failure to provide the licence⁴. This is subject to regulations made by the Secretary of State⁵ as to the form⁶ of applications and notices and the fees⁷ which must accompany them⁸.

An application for renewal may be made only during the period of two months beginning three months before the time the licence would expire⁹ if no application for renewal were made¹⁰. The application must be made in writing¹¹ and must be accompanied by the same photographs¹², certificates or search results¹³ and declaration¹⁴ as in the case of an application for the grant of a personal licence¹⁵.

1 As to the meaning of 'personal licence' see PARA 114.

2 Licensing Act 2003 s 117(1)(b).

3 Licensing Act 2003 s 117(3). For the purposes Pt 6 (ss 111-135), the 'relevant licensing authority', in relation to a personal licence, is the licensing authority which granted the licence: s 112. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

4 Licensing Act 2003 s 117(4).

5 Ie regulations under the Licensing Act 2003 s 133 (form etc of applications and notices under Pt 6): see PARA 115 note 4.

6 For the prescribed form of application see the Licensing Act 2003 (Personal licences) Regulations 2005, SI 2005/41, reg 6(2), Sch 2.

7 At the date at which this volume states the law, the prescribed fee was £37: see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, Sch 6.

8 Licensing Act 2003 s 117(5).

9 Ie in accordance with the Licensing Act 2003 s 115(1): see PARA 123.

10 Licensing Act 2003 s 117(6).

11 Licensing Act 2003 (Personal licences) Regulations 2005, SI 2005/41, reg 9(1). As to the use of electronic communications, however, see reg 9(2), (3), cited in PARA 115.

12 See PARA 115 at head (A).

13 See PARA 115 at head (B).

14 See PARA 115 at head (C).

15 See the Licensing Act 2003 (Personal licences) Regulations 2005, SI 2005/41, reg 7(1), cited in PARA 115.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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117. Duty to notify licensing authority of convictions during application period.

Where an applicant for the grant or renewal of a personal licence¹ is convicted of a relevant offence² or a foreign offence³ during the application period⁴, he must as soon as reasonably practicable notify the conviction to the authority to which the application is made⁵. A person commits an offence if he fails, without reasonable excuse, to comply with this requirement⁶.

The following offences are 'relevant offences' for the purposes of the statutory provisions relating to personal licences⁷:

- 432 (1) an offence under the Licensing Act 2003⁸;
- 433 (2) an offence under certain other enactments relating to licensing⁹ which have now been repealed¹⁰;
- 434 (3) an offence under the Firearms Act 1968¹¹;
- 435 (4) an offence with regard to false trade description of goods under the Trade Descriptions Act 1968¹² in circumstances where the goods in question are or include alcohol¹³;
- 436 (5) an offence under specified provisions¹⁴ of the Theft Act 1968¹⁵;
- 437 (6) an offence of allowing a child to take part in gaming on premises licensed for the sale of alcohol¹⁶ under a provision of the Gaming Act 1968 which has now been repealed¹⁷;
- 438 (7) an offence under specified provisions¹⁸ of the Misuse of Drugs Act 1971¹⁹;
- 439 (8) an offence under certain provisions²⁰ of the Theft Act 1978²¹;
- 440 (9) an offence under certain provisions of the Customs and Excise Management Act 1979²² relating to the evasion of duty²³;
- 441 (10) an offence under certain provisions of the Tobacco Products Duty Act 1979²⁴ with regard to the sale of unmarked tobacco²⁵;
- 442 (11) subject to certain exceptions²⁶, an offence under the Forgery and Counterfeiting Act 1981²⁷;
- 443 (12) an offence under the Firearms (Amendment) Act 1988²⁸;
- 444 (13) an offence under specified provisions²⁹ of the Copyright, Designs and Patents Act 1988³⁰;
- 445 (14) an offence under certain provisions of the Road Traffic Act 1988³¹ relating to driving while under the influence of drink or drugs³²;
- 446 (15) an offence under certain provisions of the Food Safety Act 1990³³ in circumstances where the food in question is or includes alcohol³⁴;
- 447 (16) an offence under the Trade Marks Act 1994 relating to the unauthorised use of a trade mark in relation to goods³⁵ in circumstances where the goods in question are or include alcohol³⁶;
- 448 (17) an offence under the Firearms (Amendment) Act 1997³⁷;
- 449 (18) certain sexual offences³⁸;
- 450 (19) a violent offence, being any offence which leads, or is intended or likely to lead, to a person's death or to physical injury to a person, including an offence which is required to be charged as arson, whether or not it would otherwise fall within this definition³⁹;
- 451 (20) an offence under the Private Security Industry Act 2001⁴⁰ of engaging in certain activities relating to security without a licence⁴¹;

- 452 (21) an offence under the Gambling Act 2005 of inviting, causing or permitting a child or young person to gamble⁴², if the child or young person was invited, caused or permitted to gamble on premises⁴³ in respect of which a premises licence⁴⁴ under the Licensing Act 2003 had effect⁴⁵; and
- 453 (22) an offence under the Fraud Act 2006⁴⁶.

1 As to the meaning of 'personal licence' see PARA 114. As to applications for the grant of such a licence see PARA 115; and as to applications for renewal see PARA 116.

2 In the Licensing Act 2003 Pt 6 (ss 111-135), 'relevant offence' means an offence listed in Sch 4 (see heads (1)-(22) in the text: s 113(1). The Secretary of State may by order amend that list so as to add, modify or omit any entry: s 113(2). As to the Secretary of State see PARA 2; and as to the exercise of this power see notes 38, 39, 46. For the purposes of Pt 6, a conviction for a relevant offence or a foreign offence (see note 3) must be disregarded if it is spent for the purposes of the Rehabilitation of Offenders Act 1974 (see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 660 et seq): Licensing Act 2003 s 114.

3 'Foreign offence' means an offence, other than a relevant offence, under the law of any place outside England and Wales: Licensing Act 2003 s 113(3). As to spent convictions see note 2.

4 For these purposes, 'the application period' means the period that begins when the application for grant or renewal is made, and ends when the application is determined or withdrawn: Licensing Act 2003 s 123(4).

5 Licensing Act 2003 s 123(1). A licensing authority only has power to forfeit or suspend a personal licence where it learns after granting or renewing the licence that the licence holder was convicted of a relevant offence during the application period. Otherwise the criminal courts have the power to forfeit a licence or suspend it for a period of up to six months where a personal licence holder is convicted of a relevant offence. It is the duty of a defendant charged with a 'relevant offence' to draw to the court's attention that he is the holder of a personal licence. There is no similar obligation on part of the police or the Crown Prosecution Service. If the authorities discover that the defendant is a personal licence holder after he has been sentenced then the matter can be returned to the court within 28 days of sentence, for the sentence to be altered under the slip rule. The licensing authority itself has no power to impose sanctions until the personal licence falls due for renewal.

6 Licensing Act 2003 s 123(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 123(3). As to the standard scale see PARA 17 note 21.

7 Ie for the purposes of the Licensing Act 2003 Pt 6.

8 Licensing Act 2003 Sch 4 para 1.

9 Ie an offence under any of the following enactments: (1) the London Government Act 1963 Sch 12; (2) the Licensing Act 1964; (3) the Private Places of Entertainment (Licensing) Act 1967; (4) the Theatres Act 1968 s 13; (5) the Late Night Refreshment Houses Act 1969; (6) the Local Government (Miscellaneous Provisions) Act 1982 s 6 or Sch 1; (7) the Licensing (Occasional Permissions) Act 1983; (8) the Cinemas Act 1985 (all repealed, subject in most cases to transitional provisions). An offence under the London Local Authorities Act 1990 (see **LONDON GOVERNMENT**) is also a relevant offence: Licensing Act 2003 Sch 4 para 2(i).

10 Licensing Act 2003 Sch 4 para 2(a)-(h).

11 Licensing Act 2003 Sch 4 para 3. As to such offences see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 630 et seq.

12 Ie an offence under the Trade Descriptions Act 1968 s 1 (false trade description of goods): see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 475.

13 Licensing Act 2003 Sch 4 para 4. As to the meaning of 'alcohol' see PARA 30.

14 Ie an offence under any of the following provisions of the Theft Act 1968: s 1 (theft: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 282); s 8 (robbery: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 293); s 9 (burglary: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 294); s 10 (aggravated burglary: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 295); s 11 (removal of articles from places open to the public: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 297); s 12A (aggravated vehicle-taking: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 299), in circumstances where s 12A(2)(b) applies and the accident caused the death of any person; s 13 (abstracting of electricity: see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1189); ss 15, 15A, 16 (all repealed); s 17 (false accounting: see **CRIMINAL LAW, EVIDENCE**

AND PROCEDURE vol 11(1) (2006 Reissue) PARA 316); s 19 (false statements by company directors etc: see **COMPANIES** vol 14 (2009) PARA 314); s 20 (suppression, etc of documents: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 317); s 21 (blackmail: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 308); s 22 (handling stolen goods: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 302); s 24A (dishonestly retaining a wrongful credit: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 307); s 25 (going equipped for stealing etc: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 296).

15 Licensing Act 2003 Sch 4 para 5.

16 Is an offence under the Gaming Act 1968 s 7(2) (repealed).

17 Licensing Act 2003 Sch 4 para 6.

18 Is an offence under any of the following provisions of the Misuse of Drugs Act 1971: s 4(2) (production of a controlled drug); s 4(3) (supply of a controlled drug); s 5(3) (possession of a controlled drug with intent to supply) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 772); s 8 (permitting activities to take place on premises) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 777).

19 Licensing Act 2003 Sch 4 para 7.

20 Is an offence under either the Theft Act 1978 s 1 or s 2 (both repealed).

21 Licensing Act 2003 Sch 4 para 8.

22 Is an offence under either of the following provisions of the Customs and Excise Management Act 1979: s 170 (disregarding s 170(1)(a)) (fraudulent evasion of duty etc: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1178); s 170B (taking preparatory steps for evasion of duty: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1180).

23 Licensing Act 2003 Sch 4 para 9.

24 Is an offence under either of the following provisions of the Tobacco Products Duty Act 1979: s 8G (possession and sale of unmarked tobacco), s 8H (use of premises for sale of unmarked tobacco): see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 593.

25 Licensing Act 2003 Sch 4 para 10.

26 Is other than an offence under the Forgery and Counterfeiting Act 1981 s 18 or s 19: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 548-549.

27 Licensing Act 2003 Sch 4 para 11.

28 Licensing Act 2003 Sch 4 para 12.

29 Is an offence under any of the following provisions of the Copyright, Designs and Patents Act 1988: s 107(1)(d)(iii), (3) (public exhibition in the course of a business of article infringing copyright or infringement of copyright by public performance of work etc: see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 437); s 198(2) (broadcast etc of recording of performance made without sufficient consent: see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 715); s 297(1) (fraudulent reception of transmission: see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 491); s 297A(1) (supply etc of unauthorised decoder: see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 492).

30 Licensing Act 2003 Sch 4 para 13.

31 Is an offence under any of the following provisions of the Road Traffic Act 1988: s 3A (causing death by careless driving while under the influence of drink or drugs: see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 974); s 4 (driving etc a vehicle when under the influence of drink or drugs: see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 975); s 5 (driving etc a vehicle with alcohol concentration above prescribed limit: see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 978).

32 Licensing Act 2003 Sch 4 para 14.

33 Is an offence under either of the following provisions of the Food Safety Act 1990 in circumstances where the food in question is or includes alcohol: s 14 (selling food or drink not of the nature, substance or quality demanded: see **FOOD** vol 18(2) (Reissue) PARA 360; see also *Nottingham City Council v Wolverhampton and*

Dudley Breweries [2003] EWHC 2847 (Admin), [2004] QB 1275, [2004] 1 All ER 1352); s 15 (falsely describing or presenting food or drink: see **FOOD** vol 18(2) (Reissue) PARA 372).

34 Licensing Act 2003 Sch 4 para 15.

35 Ie an offence under the Trade Marks Act 1994 s 92(1) or (2) (unauthorised use of trade mark, etc in relation to goods): see **TRADE MARKS AND TRADE NAMES** vol 48 (2007 Reissue) PARAS 141-142.

36 Licensing Act 2003 Sch 4 para 16.

37 Licensing Act 2003 Sch 4 para 17.

38 Ie a sexual offence, being an offence (1) listed in the Criminal Justice Act 2003 Sch 15 Pt 2 (see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 71), other than the offence mentioned in Sch 15 para 95 (ie an offence under the Sexual Offences Act 1967 s 4 (repealed)); (2) under the Sexual Offences Act 1956 s 8 (repealed); (3) under the Sexual Offences Act 1956 s 18 (repealed): Licensing Act 2003 Sch 4 para 18 (substituted by SI 2005/2366).

39 Licensing Act 2003 Sch 4 para 19 (substituted by SI 2005/2366).

40 Ie a offence under the Private Security Industry Act 2001 s 3: see **TRADE AND INDUSTRY** vol 97 (2010) PARA 893.

41 Licensing Act 2003 Sch 4 para 20.

42 Ie an offence under the Gambling Act 2005 s 46: see PARA 621.

43 As to the meaning of 'premises' see PARA 27 note 12.

44 As to the meaning of 'premises licence' see PARA 53 note 1.

45 Licensing Act 2003 Sch 4 para 21 (added by the Gambling Act 2005 Sch 16 Pt 2 para 20(1), (4)).

46 Licensing Act 2003 Sch 4 para 22 (added by the Fraud Act 2006 Sch 1 para 34; renumbered by SI 2007/2075).

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

117 Duty to notify licensing authority of convictions during application period

TEXT AND NOTES 7-46--Also, heads (23) an offence under the Business Protection from Misleading Marketing Regulations 2008, SI 2008/1276, reg 6 (offence of misleading advertising) in circumstances where the advertising in question relates to alcohol or to goods that include alcohol (Licensing Act 2003 Sch 4 para 22 (also added by SI 2008/1277)); and (24) an offence under the Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277, reg 8, 9, 10, 11 or 12 (offences relating to unfair commercial practices) in circumstances where the commercial practice in question is directly connected with the promotion, sale or supply of alcohol or of a product that includes alcohol (Licensing Act 2003 Sch 4 para 23 (added by SI 2008/1277)).

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118. Determination of application for grant of licence and rights of appeal.

Where an application for the grant of a personal licence¹ is made to a licensing authority², the authority must grant the licence if it appears to it that:

- 454 (1) the applicant is aged 18 or over;
- 455 (2) he possesses a licensing qualification³ or is a person of a description prescribed by regulations made by the Secretary of State⁴;
- 456 (3) no personal licence held by him has been forfeited in the period of five years ending with the day the application was made; and
- 457 (4) he has not been convicted of any relevant offence⁵ or any foreign offence⁶.

The authority must reject the application if it appears to it that the applicant fails to meet the condition in head (1), head (2) or head (3) above⁷. If it appears to the authority that the applicant meets the conditions in heads (1), (2) and (3) above but fails to meet the condition in head (4) above, the authority must give the chief officer of police⁸ for its area a notice to that effect⁹.

Where, having regard to any conviction of the applicant for a relevant offence and any conviction of his for a foreign offence which the chief officer of police considers to be comparable to a relevant offence, the chief officer of police is satisfied that granting the licence would undermine the crime prevention objective¹⁰, he must, within the period of 14 days beginning with the day he received the notice mentioned above¹¹, give the authority a notice stating the reasons why he is so satisfied (an 'objection notice')¹². Where no objection notice is given within that period, or the notice is withdrawn, the authority must grant the application¹³.

In any other case, the authority:

- 458 (a) must hold a hearing¹⁴ to consider the objection notice, unless the applicant, the chief officer of police and the authority agree that it is unnecessary; and
- 459 (b) having regard to the notice, must reject the application if it considers it necessary for the promotion of the crime prevention objective to do so, and must grant the application in any other case¹⁵.

Where a licensing authority grants an application for the grant of a personal licence:

- 460 (i) it must give the applicant and the chief officer of police for its area a notice to that effect; and
- 461 (ii) if the chief officer of police gave an objection notice which was not withdrawn, the notice under head (i) above must contain a statement of the licensing authority's reasons for granting the application¹⁶.

A licensing authority which rejects such an application must give the applicant and the chief officer of police for its area a notice to that effect containing a statement of the authority's reasons for rejecting the application¹⁷.

Where a licensing authority rejects an application for the grant of a personal licence, the applicant may appeal¹⁸ against that decision¹⁹; and where a licensing authority grants an application for a personal licence under head (b) above, the chief officer of police who gave the objection notice may appeal against that decision²⁰. The procedure on such an appeal, and the powers of the magistrates' court which hears it, have already been discussed²¹. The task of the justices in determining such an appeal involves a consideration of the application as a whole, having regard to the Secretary of State's guidance which has been published in order to assist licensing authorities to exercise their functions in determining such applications²², the licensing objectives²³ and the test as set out under head (b) above²⁴.

1 As to the meaning of 'personal licence' see PARA 114.

2 In accordance with the Licensing Act 2003 s 117: see PARA 115. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 For these purposes, 'licensing qualification' means: (1) a qualification accredited at the time of its award, and awarded by a body accredited at that time; (2) a qualification awarded before 7 February 2005 (ie the date when the Licensing Act 2003 s 120 came into force: see the Licensing Act 2003 (Commencement No 5) Order 2004, SI 2004/2360, art 2(1), Schedule) which the Secretary of State certifies is to be treated for these purposes as if it were a qualification within head (1) above; or (3) a qualification obtained in Scotland or Northern Ireland or in an EEA state (other than the United Kingdom) which is equivalent to a qualification within head (1) or head (2) above: Licensing Act 2003 s 120(8). 'Accredited' means accredited by the Secretary of State; and 'EEA state' means a state which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993: Licensing Act 2003 s 120(9). As to the meaning of 'United Kingdom' see PARA 16 note 8.

4 See the Licensing Act 2003 s 193. The following persons are prescribed for these purposes: (1) a member of the company of the Master, Wardens, Freeman and Commonalty of the Mystery of the Vintners of the City of London; (2) a person operating under a licence granted by the University of Cambridge; or (3) a person operating premises under a licence granted by the Board of the Green Cloth: Licensing Act 2003 (Personal licences) Regulations 2005, SI 2005/41, reg 4.

5 As to the meaning of 'relevant offence' see PARA 117. Spent convictions must be disregarded: see PARA 117.

6 Licensing Act 2003 s 120(1), (2). As to the meaning of 'foreign offence' see PARA 117 note 3.

7 Licensing Act 2003 s 120(3).

8 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

9 Licensing Act 2003 s 120(4).

10 As to the meaning of 'the crime prevention objective' see PARA 35.

11 In the notice under the Licensing Act 2003 s 120(4): see the text and notes 8-9.

12 Licensing Act 2003 s 120(5).

13 Licensing Act 2003 s 120(6).

14 Notice of the hearing must be given to person who has made the application under the Licensing Act 2003 s 117(1) (see PARA 115); and the notice must be accompanied by the notice which has been given under s 120(5): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 7, Sch 3, Table para 11. Notice must also be given to the chief officer of police who has given notice under the Licensing Act 2003 s 120(5): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 6, Sch 2, Table para 12. The hearing must be held within 20 working days beginning with the day after the end of the period within which a chief officer of police may give notice under the Licensing Act 2003 s 120(5): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 5, Sch 1 Table, para 12. As to the meaning of 'working day' see PARA 44 note 10. As to the procedure at the hearing, or when a hearing is dispensed with, see PARA 44 et seq.

15 Licensing Act 2003 s 120(7).

16 Licensing Act 2003 s 122(1), (3). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.

17 Licensing Act 2003 s 122(2).

18 le to a magistrates' court: see PARA 52.

19 Licensing Act 2003 Sch 5 para 17(1)(a).

20 Licensing Act 2003 Sch 5 para 17(2). On such an appeal, the holder of the personal licence is to be the respondent in addition to the licensing authority: Sch 5 para 17(8).

21 See PARA 52.

22 The Secretary of State's guidance is not the test to be applied; that guidance does not replace the statutory provisions, impose a new or different test, or add a gloss on the statutory test itself: *R (on the application of South Northamptonshire Council) v Towcester Magistrates' Court* [2008] EWHC 381 (Admin), [2008] All ER (D) 76 (Feb).

23 As to the licensing objectives see PARA 35.

24 See *R (on the application of South Northamptonshire Council) v Towcester Magistrates' Court* [2008] EWHC 381 (Admin), [2008] All ER (D) 76 (Feb).

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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119. Determination of application for renewal of licence and rights of appeal.

Where an application for the renewal of a personal licence¹ is made to the relevant licensing authority², then if it appears to the authority that the applicant has been convicted of any relevant offence³ or foreign offence⁴ since the relevant time⁵, the authority must give notice to that effect to the chief officer of police⁶ for its area⁷.

Where, having regard to any conviction of the applicant for a relevant offence and any conviction of his for a foreign offence which the chief officer of police considers to be comparable to a relevant offence, the chief officer of police is satisfied that renewing the licence would undermine the crime prevention objective⁸, he must, within the period of 14 days beginning with the day he received the notice mentioned above⁹, give the authority a notice stating the reasons why he is so satisfied (an 'objection notice')¹⁰; and for these purposes it is irrelevant whether the conviction occurred before or after the relevant time¹¹.

Where no objection notice is given within that period, or any such notice is withdrawn, the authority must grant the application¹². In any other case, the authority:

- 462 (1) must hold a hearing¹³ to consider the objection notice unless the applicant, the chief officer of police and the authority agree that it is unnecessary; and
- 463 (2) having regard to the notice, must reject the application if it considers it necessary for the promotion of the crime prevention objective to do so, and must grant the application in any other case¹⁴.

Where a licensing authority grants an application for the renewal of a personal licence:

- 464 (a) it must give the applicant and the chief officer of police for its area a notice to that effect; and
- 465 (b) if the chief officer of police gave an objection notice which was not withdrawn, the notice under head (a) above must contain a statement of the licensing authority's reasons for granting the application¹⁵.

A licensing authority which rejects such an application must give the applicant and the chief officer of police for its area a notice to that effect containing a statement of the authority's reasons for rejecting the application¹⁶.

Where a licensing authority rejects an application for the renewal of a personal licence, the applicant may appeal¹⁷ against that decision¹⁸; and where a licensing authority grants an application for the renewal of a personal licence under head (2) above, the chief officer of police who gave the objection notice may appeal against that decision¹⁹. The procedure on such an appeal, and the general powers of the magistrates' court which hears it, have already been discussed²⁰.

Where the holder of a personal licence gives notice of appeal against a decision of a licensing authority to refuse to renew it, the relevant licensing authority, or the magistrates' court to which the appeal has been made, may, on such conditions as it thinks fit:

- 466 (i) order that the licence is to continue in force until the relevant time²¹, if it would otherwise cease to have effect before that time; or
 467 (ii) where the licence has already ceased to have effect, order its reinstatement until the relevant time²².

1 As to the meaning of 'personal licence' see PARA 114.

2 le in accordance with the Licensing Act 2003 s 117: see PARA 116. As to the meaning of 'relevant licensing authority' see PARA 116 note 3. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 As to the meaning of 'relevant offence' see PARA 117. Spent convictions must be disregarded: see PARA 117.

4 As to the meaning of 'foreign offence' see PARA 117 note 3.

5 For these purposes, 'the relevant time' means: (1) if the personal licence has not been renewed since it was granted, the time it was granted; and (2) if it has been renewed, the last time it was renewed: Licensing Act 2003 s 121(7); and see PARA 117 note 5.

6 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

7 Licensing Act 2003 s 121(1), (2).

8 As to the meaning of 'the crime prevention objective' see PARA 35.

9 le the notice under the Licensing Act 2003 s 121(2).

10 Licensing Act 2003 s 121(3).

11 Licensing Act 2003 s 121(4).

12 Licensing Act 2003 s 121(5).

13 Notice of the hearing must be given to person who has made the application under the Licensing Act 2003 117(1) (see PARA 116); and the notice must be accompanied by the notice which has been given under s 121(3): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 7, Sch 3, Table para 12. Notice must also be given to the chief officer of police who has given notice under the Licensing Act 2003 121(3): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 6, Sch 2, Table para 13. The hearing must be held within 20 working days beginning with the day after the end of the period within which the chief officer of police may give notice under the Licensing Act 2003 s 121(3): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 5, Sch 1, Table para 13. As to the meaning of 'working day' see PARA 44 note 10. As to the procedure at the hearing, or when a hearing is dispensed with, see PARA 44 et seq.

14 Licensing Act 2003 s 121(6).

15 Licensing Act 2003 s 122(1), (3). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.

16 Licensing Act 2003 s 122(2).

17 le to a magistrates' court: see PARA 52.

18 Licensing Act 2003 Sch 5 para 17(1)(b).

19 Licensing Act 2003 Sch 5 para 17(3). On such an appeal, the holder of the personal licence is to be the respondent in addition to the licensing authority: Sch 5 para 17(8).

20 See PARA 52.

21 For these purposes, 'the relevant time' means (1) the time the appeal is dismissed or abandoned; or (2) where the appeal is allowed, the time the licence is renewed: Licensing Act 2003 Sch 5 para 17(11).

22 Licensing Act 2003 Sch 5 para 17(9), (10).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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120. Theft, loss etc of personal licence.

Where a personal licence¹ is lost, stolen, damaged or destroyed, the holder of the licence may apply to the relevant licensing authority² for a copy of the licence³. The application must be accompanied by the prescribed fee⁴.

Where the relevant licensing authority receives such an application, it must issue the licence holder with a copy of the licence, certified by the authority to be a true copy, if it is satisfied that the licence has been lost, stolen, damaged or destroyed, and that where it has been lost or stolen, the holder of the licence has reported the loss or theft to the police⁵. The copy so issued must be a copy of the licence in the form⁶ in which it existed immediately before it was lost, stolen, damaged or destroyed⁷; and the Licensing Act 2003 applies in relation to a copy so issued as it applies in relation to an original licence⁸.

1 As to the meaning of 'personal licence' see PARA 114.

2 As to the meaning of 'relevant licensing authority' see PARA 116 note 3. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 Licensing Act 2003 s 126(1).

4 The Licensing Act 2003 s 126(1) is subject to regulations made by the Secretary of State under s 133(2) (power to prescribe fee to accompany application: see PARA 115 note 4): s 126(2). At the date at which this volume states the law, the prescribed fee was £10.50: see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, Sch 6.

5 Licensing Act 2003 s 126(3).

6 As to the form of the licence see PARA 122.

7 Licensing Act 2003 s 126(4).

8 Licensing Act 2003 s 126(5).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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121. Convictions during the application period which come to light after grant or renewal of the licence.

Where, after a licensing authority¹ has granted or renewed a personal licence², it becomes aware³ that the holder of a personal licence ('the offender') was convicted during the application period⁴ of any relevant offence⁵ or foreign offence⁶, the licensing authority must give a notice to that effect to the chief officer of police⁷ for its area⁸.

Where, having regard to any conviction of the applicant for a relevant offence, and any conviction of his for a foreign offence which the chief officer of police considers to be comparable to a relevant offence, which occurred before the end of the application period, the chief officer of police is satisfied that continuation of the licence would undermine the crime prevention objective⁹, he must, within the period of 14 days beginning with the day he received the notice mentioned above¹⁰, give the authority a notice stating the reasons why he is so satisfied (an 'objection notice')¹¹. Where an objection notice is given within that period and not withdrawn, the authority:

- 468 (1) must hold a hearing¹² to consider the objection notice, unless the holder of the licence, the chief officer of police and the authority agree it is unnecessary; and
- 469 (2) having regard to the notice, must revoke the licence if it considers it necessary for the promotion of the crime prevention objective to do so¹³.

Where the authority revokes or decides not to revoke a licence under head (2) above, it must notify the offender and the chief officer of police of the decision and its reasons for making it¹⁴. Such a decision does not have effect until the end of the period given for appealing against the decision, or, if the decision is appealed against, until the appeal is disposed of¹⁵.

Where a licensing authority revokes a personal licence under head (2) above, the holder of the licence may appeal¹⁶ against that decision¹⁷; and where the chief officer of police for the licensing authority's area gives an objection notice and does not later withdraw it, and the licensing authority decides not to revoke the licence, the chief officer of police may appeal against the decision¹⁸. The procedure on such an appeal, and the powers of the magistrates' court which hears it, have already been discussed¹⁹.

1 As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

2 As to the meaning of 'personal licence' see PARA 114; and as to the grant or renewal of such licences see PARA 115 et seq.

3 Ie whether by virtue of the Licensing Act 2003 s 123(1) (see PARA 117), s 131 or s 132 (see PARA 131) or otherwise.

4 For these purposes, 'application period', in relation to the grant or renewal of a personal licence, means the period that begins when the application for the grant or renewal is made, and ends at the time of the grant or renewal: Licensing Act 2003 s 124(7).

- 5 As to the meaning of 'relevant offence' see PARA 117. As to spent convictions see PARA 117 note 2.
- 6 As to the meaning of 'foreign offence' see PARA 117 note 3.
- 7 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.
- 8 Licensing Act 2003 s 124(1), (2). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.
- 9 As to the meaning of 'the crime prevention objective' see PARA 35.
- 10 Ie the notice under the Licensing Act 2003 s 124(2).
- 11 Licensing Act 2003 s 124(3).
- 12 Notice of the hearing must be given to the holder of the licence in respect of which the notice has been given; and the notice must be accompanied by the notice which has been given under the Licensing Act 2003 s 124(3): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 7, Sch 3, Table para 13. Notice must also be given to the chief officer of police who has given notice under the Licensing Act 2003 s 124(3): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 6, Sch 2, Table para 14. The hearing must be held within 20 working days beginning with the day after the end of the period within which the chief officer of police may give notice under the Licensing Act 2003 s 124(3): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 5, Sch 1, Table para 14. As to the meaning of 'working day' see PARA 44 note 10. As to the procedure at the hearing, or when a hearing is dispensed with, see PARA 44 et seq.
- 13 Licensing Act 2003 s 124(4).
- 14 Licensing Act 2003 s 124(5).
- 15 Licensing Act 2003 s 124(6).
- 16 Ie to a magistrates' court: see PARA 52.
- 17 Licensing Act 2003 Sch 5 para 17(4).
- 18 Licensing Act 2003 Sch 5 para 17(5). On such an appeal, the holder of the personal licence is to be the respondent in addition to the licensing authority: Sch 5 para 17(8).
- 19 See PARA 52.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(iii) Form and Period of Validity of Personal Licence

122. Form of licence.

Where a licensing authority¹ grants a personal licence², it must forthwith issue the applicant with the licence³. The licence must be in the prescribed⁴ form⁵.

The licence:

- 470 (1) must specify the holder's name and address, and identify the licensing authority which granted it⁶; and
- 471 (2) must also contain a record of each relevant offence⁷ and each foreign offence⁸ of which the holder has been convicted, the date of each conviction and the sentence imposed in respect of it⁹.

A personal licence must be in the form of a physical document in two separate parts and must contain:

- 472 (a) in the first part, the matters referred to in head (1) above, a photograph of the holder, a number allocated by the licensing authority that is unique to the licence, an identifier for the licensing authority granting the licence and the date of the expiry of the licence; and this part must be produced in durable form and must be of a size no larger than 70 millimetres by 100 millimetres; and
- 473 (b) in the second part, the matters referred to in head (2) above and the matters referred to in head (a) above except that the photograph of the holder is to be omitted¹⁰.

1 As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

2 As to the meaning of 'personal licence' see PARA 114.

3 Licensing Act 2003 s 125(1).

4 'Prescribed' means prescribed by regulations made by the Secretary of State: Licensing Act 2003 s 193.

5 Licensing Act 2003 s 125(4). This is subject to s 125(2)-(3) (see the text to notes 6-9). For the prescribed form of personal licence see the Licensing Act 2003 (Personal licences) Regulations 2005, SI 2005/41, reg 5; and the text to note 10.

6 Licensing Act 2003 s 125(2).

7 As to the meaning of 'relevant offence' see PARA 117. As to spent convictions see PARA 117 note 2.

8 As to the meaning of 'foreign offence' see PARA 117 note 3.

9 Licensing Act 2003 s 125(3).

10 Licensing Act 2003 (Personal licences) Regulations 2005, SI 2005/41, reg 5.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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123. Period of validity of licence.

A personal licence¹ has effect for an initial period of ten years beginning with the date on which it is granted, and may be renewed in accordance with Part 6 of the Licensing Act 2003² for further periods of ten years at a time³.

A personal licence ceases to have effect when it is revoked⁴ or forfeited⁵ and does not have effect during any period⁶ when it is suspended⁷.

Where an application for renewal is made⁸ and the application has not been determined before the time the licence would otherwise expire, then the licence continues to have effect for the period beginning with that time and ending with the determination or withdrawal of the application⁹, unless¹⁰ it is revoked, forfeited, suspended or surrendered¹¹.

1 As to the meaning of 'personal licence' see PARA 114.

2 In accordance with the Licensing Act 2003 Pt 6 (ss 111-135): see PARA 115 et seq. As to renewal of a personal licence see PARAS 116, 119.

3 Licensing Act 2003 s 115(1). Section 115(1) is subject to s 115(3)-(4) (see the text and notes 4-7) and to s 116 (surrender: see PARA 127), s 119 (continuation of licence pending renewal: see the text and notes 8-11), and Sch 5 para 17 (continuation of licence pending disposal of appeal: see Sch 5 para 17(9)-(11); and PARA 119): s 115(2).

4 In revoked under the Licensing Act 2003 s 124: see PARA 121.

5 Licensing Act 2003 s 115(3). As to forfeiture see s 129; and PARA 129. Section 115(3)-(4) is subject to any court order under s 129(4) or s 130 (see PARA 129): s 115(5).

6 In any period when it is suspended under the Licensing Act 2003 s 129: see PARA 129.

7 Licensing Act 2003 s 115(4); and see note 5.

8 In accordance with the Licensing Act 2003 s 117: see PARA 116.

9 Licensing Act 2003 s 119(1).

10 The Licensing Act 2003 s 119(1) is subject to s 115(3)-(4) (revocation, forfeiture and suspension: see the text to notes 5-7) and to s 116 (surrender: see PARA 127): s 119(2).

11 See the Licensing Act 2003 s 119(2).

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(5) PERSONAL LICENCES/(iv) Duties with regard to Personal Licences/124. Licence holder's duty to produce licence.

(iv) Duties with regard to Personal Licences

124. Licence holder's duty to produce licence.

Where the holder of a personal licence¹ is on premises² to make or authorise the supply of alcohol³, and such supplies are authorised by a premises licence⁴ in respect of those premises, or are a permitted temporary activity⁵ on the premises by virtue of a temporary event notice⁶ given under Part 5 of the Licensing Act 2003⁷ in respect of which he is the premises user⁸, then any constable⁹ or authorised officer¹⁰ may require the holder of the personal licence to produce that licence for examination¹¹. An authorised officer exercising this power must, if so requested, produce evidence of his authority to exercise the power¹².

A person who fails, without reasonable excuse, to comply with such a requirement to produce his licence is guilty of an offence¹³.

1 As to the meaning of 'personal licence' see PARA 114.

2 As to the meaning of 'premises' see PARA 27 note 12.

3 As to the meaning of 'alcohol' see PARA 30.

4 As to the meaning of 'premises licence' see PARA 53 note 1.

5 As to the meaning of 'permitted temporary activity' see PARA 108.

6 As to the meaning of 'temporary event notice' see PARA 108.

7 I.e. the Licensing Act 2003 Pt 5 (ss 98-110): see PARA 108 et seq.

8 As to the meaning of 'premises user' see PARA 108 note 19.

9 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

10 For these purposes, 'authorised officer' means an officer of a licensing authority authorised by the authority for the purposes of the Licensing Act 2003: s 135(6). As to the licensing authorities see PARA 3.

11 Licensing Act 2003 s 135(1), (2).

12 Licensing Act 2003 s 135(3).

13 Licensing Act 2003 s 135(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 135(5). As to the standard scale see PARA 17 note 21.

As to replacement of a personal licence which is lost, stolen, damaged or destroyed see s 126; and PARA 120.

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(5) PERSONAL LICENCES/(iv) Duties with regard to Personal Licences/125. Notification of change of name or address.

125. Notification of change of name or address.

The holder of a personal licence¹ must, as soon as reasonably practicable, notify the relevant licensing authority² of any change in his name or address as stated in the personal licence³. The notice must be accompanied by the prescribed fee⁴. Such a notice must also be accompanied by the personal licence or, if that is not practicable, by a statement of the reasons for the failure to provide the licence⁵.

A person commits an offence if he fails, without reasonable excuse, to comply with the above requirements⁶.

1 As to the meaning of 'personal licence' see PARA 114.

2 As to the meaning of 'relevant licensing authority' see PARA 116 note 3. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 Licensing Act 2003 s 127(1).

4 The Licensing Act 2003 s 127(1) is subject to regulations made by the Secretary of State under s 133(2) (power to prescribe fee to accompany notice: see PARA 115 note 4): see s 127(2). At the date at which this volume states the law, the prescribed fee was £10.50: see the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, Sch 6.

5 Licensing Act 2003 s 127(3).

6 Licensing Act 2003 s 127(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 127(5). As to the standard scale see PARA 17 note 21.

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(5) PERSONAL LICENCES/(iv) Duties with regard to Personal Licences/126. Licensing authority's duty to update licence document.

126. Licensing authority's duty to update licence document.

Where:

- 474 (1) the relevant licensing authority¹ makes a determination of an application for renewal of a personal licence² or a determination in considering an objection notice³;
- 475 (2) it receives a notice in regard to convictions during the application period⁴, a notice of change of name and address⁵, a notice of convictions from the court⁶ or a notice of convictions from the licence holder⁷; or
- 476 (3) an appeal against a decision under Part 6 of the Licensing Act 2003⁸ is disposed of,

in relation to a personal licence, the authority must make the appropriate amendments, if any, to the licence⁹.

Where notice is given¹⁰ of the making of a forfeiture or suspension order¹¹, the relevant licensing authority must make an indorsement on the licence stating the terms of the order¹²; and where notice is given¹³ of the quashing of such an order, any indorsement previously so made in respect of it must be cancelled¹⁴.

Where a licensing authority is not in possession of a personal licence, it may, for the purposes of discharging its obligations under the provisions set out above, require the holder of the licence to produce it to the authority within 14 days beginning with the day on which he is notified of the requirement¹⁵. A person commits an offence if he fails, without reasonable excuse, to comply with such a requirement¹⁶.

1 As to the meaning of 'relevant licensing authority' see PARA 116 note 3. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

2 I.e a determination under the Licensing Act 2003 s 121: see PARA 119. As to the meaning of 'personal licence' see PARA 114.

3 I.e a determination under the Licensing Act 2003 s 124(4): see PARA 121.

4 I.e a notice under the Licensing Act 2003 s 123(1): see PARA 117. See also PARA 117 note 5.

5 I.e a notice under the Licensing Act 2003 s 127: see PARA 125.

6 I.e a notice under the Licensing Act 2003 s 131: see PARA 130.

7 I.e a notice under the Licensing Act 2003 s 132: see PARA 131.

8 I.e the Licensing Act 2003 Pt 6 (ss 111-135): see PARAS 115 et seq, 127 et seq.

9 Licensing Act 2003 s 134(1).

10 I.e under the Licensing Act 2003 s 131: see PARA 130.

11 le under the Licensing Act 2003 s 129: see PARA 129.

12 Licensing Act 2003 s 134(2).

13 See note 10.

14 Licensing Act 2003 s 134(3).

15 Licensing Act 2003 s 134(4).

16 Licensing Act 2003 s 134(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 134(6). As to the standard scale see PARA 17 note 21.

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(v) Surrender of Personal Licence

127. Surrender of licence.

Where the holder of a personal licence¹ wishes to surrender his licence he may give the relevant licensing authority² a notice to that effect³.

The above notice must be accompanied by the personal licence or, if that is not practicable, by a statement of the reasons for the failure to provide the licence⁴. Where a notice of surrender is given in accordance with these provisions, the personal licence lapses on receipt of the notice by the authority⁵.

1 As to the meaning of 'personal licence' see PARA 114.

2 As to the meaning of 'relevant licensing authority' see PARA 116 note 3. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 Licensing Act 2003 s 116(1). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.

4 Licensing Act 2003 s 116(2).

5 Licensing Act 2003 s 116(3).

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(5) PERSONAL LICENCES/(vi) Conviction of Licence Holder for Relevant Offence/128. Licence holder's duty to produce personal licence to the court or notify the court of its existence.

(vi) Conviction of Licence Holder for Relevant Offence

128. Licence holder's duty to produce personal licence to the court or notify the court of its existence.

Where the holder of a personal licence¹ is charged with a relevant offence², he must, no later than the time he makes his first appearance in a magistrates' court in connection with that offence, either produce to the court the personal licence, or, if that is not practicable, notify the court of the existence of the personal licence and the identity of the relevant licensing authority³ and of the reasons why he cannot produce the licence⁴.

Where a person charged with a relevant offence is granted a personal licence:

- 477 (1) after his first appearance in a magistrates' court in connection with that offence; but
- 478 (2) before either his conviction, and sentencing for the offence, or his acquittal, or, where an appeal is brought against his conviction, sentence or acquittal, the disposal of that appeal,

then at his next appearance in court in connection with that offence, that person must either produce to the court the personal licence, or, if that is not practicable, notify the court of the existence of the personal licence and the identity of the relevant licensing authority and of the reasons why he cannot produce the licence⁵.

Where:

- 479 (a) a person charged with a relevant offence has produced his licence to, or notified, a court under the above provisions⁶; and
- 480 (b) before he is convicted of and sentenced for, or acquitted of, that offence, a notifiable event⁷ occurs in respect of the licence,

he must, at his next appearance in court in connection with that offence, notify the court of that event⁸.

A person commits an offence if he fails, without reasonable excuse, to comply with any of the above requirements⁹.

1 As to the meaning of 'personal licence' see PARA 114.

2 As to the meaning of 'relevant offence' see PARA 117.

3 As to the meaning of 'relevant licensing authority' see PARA 116 note 3. As to the licensing authorities see PARA 3.

4 Licensing Act 2003 s 128(1).

5 Licensing Act 2003 s 128(2), (3).

6 le under the Licensing Act 2003 s 128(1) or s 128(3).

7 For this purpose a 'notifiable event' in relation to a personal licence means any of the following: (1) the making or withdrawal of an application for renewal of the licence; (2) the surrender of the licence under the Licensing Act 2003 s 116 (see PARA 127); (3) the renewal of the licence under s 121 (see PARA 119); (4) the revocation of the licence under s 124 (see PARA 121); Licensing Act 2003 s 128(5).

8 Licensing Act 2003 s 128(4).

9 Licensing Act 2003 s 128(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 128(7). As to the standard scale see PARA 17 note 21.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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129. Forfeiture or suspension of licence on conviction for relevant offence.

Where the holder of a personal licence¹ is convicted of a relevant offence² by or before a court in England and Wales, the court may order the forfeiture of the licence, or order its suspension for a period not exceeding six months³. In determining whether to make such an order, the court may take account of any previous conviction⁴ of the holder for a relevant offence⁵.

Where a court makes an order under the above provisions, it may suspend the order pending an appeal against it⁶. Subject to that, and to the powers of the appellate court which are set out below⁷, such an order takes effect immediately after it is made⁸.

Where a person ('the offender') is convicted of a relevant offence, and an order is made under the above provisions in respect of that conviction ('the section 129 order'), the following provisions apply⁹:

- 481 (1) where the offender appeals to the Crown Court, or appeals or applies for leave to appeal to the Court of Appeal, against his conviction or his sentence¹⁰, the Crown Court or, as the case may be, the Court of Appeal may suspend the section 129 order¹¹;
- 482 (2) where the offender appeals or applies for leave to appeal to the House of Lords or, as from a day to be appointed¹², to the Supreme Court, from any decision of the High Court¹³ or of the Court of Appeal¹⁴ which is material to his conviction or sentence, the High Court or, as the case may require, the Court of Appeal may suspend the section 129 order¹⁵;
- 483 (3) where the offender makes an application in respect of the decision of the court in question for a statement of case by a magistrates' court¹⁶ or by the Crown Court¹⁷, the High Court may suspend the section 129 order¹⁸;
- 484 (4) where the offender applies to the High Court for a quashing order to remove into the High Court any proceedings of a magistrates' court or of the Crown Court, being proceedings in or in consequence of which he was convicted or his sentence was passed, or applies to the High Court for permission to make such an application, the High Court may suspend the section 129 order¹⁹.

Any power of a court under heads (1) to (4) above to suspend the section 129 order is a power to do so on such terms as the court thinks fit²⁰. Where, by virtue of these provisions, a court suspends the section 129 order it must send notice of the suspension to the relevant licensing authority²¹. Where the section 129 order is an order for forfeiture of the licence, an order under heads (1) to (4) above to suspend that order has effect to reinstate the licence for the period of the suspension²².

1 As to the meaning of 'personal licence' see PARA 114.

2 As to the meaning of 'relevant offence' see PARA 117.

3 Licensing Act 2003 s 129(1), (2).

4 As to spent convictions see PARA 117 note 2.

5 Licensing Act 2003 s 129(3).

6 Licensing Act 2003 s 129(4).

7 le subject to the Licensing Act 2003 s 130: see the text and notes 9-22.

8 Licensing Act 2003 s 129(5).

9 Licensing Act 2003 s 130(1).

10 For these purposes, any reference to the offender's sentence includes a reference to the section 129 order and to any other order made on his conviction and, accordingly, any reference to an appeal against his sentence includes a reference to an appeal against any order forming part of his sentence: Licensing Act 2003 s 130(2).

11 Licensing Act 2003 s 130(3).

12 le as from a day to be appointed under the Constitutional Reform Act 2005 s 148(1). At the date at which this volume states the law, no such day had been appointed.

13 le he appeals or applies for leave to appeal under the Administration of Justice Act 1960 s 1: see **COURTS** vol 10 (Reissue) PARA 362; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2020.

14 le he appeals or applies for leave to appeal under the Criminal Appeal Act 1968 s 33: see **COURTS** vol 10 (Reissue) PARA 362; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1966.

15 Licensing Act 2003 s 130(4) (prospectively amended by the Constitutional Reform Act 2005 Sch 9 Pt 1 para 78, as from a day to be appointed (see note 12)).

16 le an application under the Magistrates' Courts Act 1980 s 111: see **MAGISTRATES** vol 29(2) (Reissue) PARA 885.

17 le an application under the Supreme Court Act 1981 s 28: see **CIVIL PROCEDURE** vol 12 (2009) PARA 1688. As from a day to be appointed (see note 12), the Supreme Court Act 1981 is retitled the Senior Courts Act 1981: see the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 1 para 1 (not yet in force).

18 Licensing Act 2003 s 130(5) (prospectively amended by the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1(2), as from a day to be appointed (see note 12)).

19 Licensing Act 2003 s 130(6).

20 Licensing Act 2003 130(7).

21 Licensing Act 2003 s 130(8). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.

22 Licensing Act 2003 s 130(9).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

129 Forfeiture or suspension of licence on conviction for relevant offence

NOTES 12, 17--Appointed day is 1 October 2009: SI 2009/1604.

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130. Court's duty to notify licensing authority of licence holder's convictions.

Where a person who holds a personal licence¹ ('the relevant person') is convicted, by or before a court in England and Wales, of a relevant offence² in a case where the relevant person has given notice³ that he has a personal licence, or the court is, for any other reason, aware of the existence of that personal licence, the following provisions apply⁴. The appropriate officer⁵ of the court must, as soon as reasonably practicable:

- 485 (1) send to the relevant licensing authority⁶ a notice specifying the name and address of the relevant person, the nature and date of the conviction, and any sentence passed in respect of it, including any order made for the forfeiture or suspension of the licence⁷; and
- 486 (2) send a copy of the notice to the relevant person⁸.

Where, on an appeal against the relevant person's conviction for the relevant offence or against the sentence imposed on him for that offence, his conviction is quashed or a new sentence is substituted for that sentence, the court which determines the appeal must, as soon as reasonably practicable, arrange for notice of the quashing of the conviction or the substituting of the sentence to be sent to the relevant licensing authority, and for a copy of the notice to be sent to the relevant person⁹.

Where the case is referred to the Court of Appeal for review of the sentence as being unduly lenient¹⁰, the court must cause notice of any action it takes to quash the sentence and to impose a new sentence¹¹ to be sent to the relevant licensing authority, and must cause a copy of the notice to be sent to the relevant person¹².

1 As to the meaning of 'personal licence' see PARA 114.

2 As to the meaning of 'relevant offence' see PARA 117.

3 Ie under the Licensing Act 2003 s 128: see PARA 128. See also PARA 117 note 5.

4 Licensing Act 2003 s 131(1).

5 For these purposes, 'the appropriate officer' is (1) in the case of a magistrates' court, the clerk of the court; and (2) in the case of the Crown Court, the appropriate officer: Licensing Act 2003 s 131(5). Section 131(5) applies the Magistrates' Courts Act 1980 s 141 (repealed) (former meaning of 'clerk of a magistrates' court'); as to justices' clerks see now the Courts Act 2003 s 27 (amended by the Constitutional Reform Act 2005 Sch 4 Pt 1 paras 308, 326(1)-(5)). See further **MAGISTRATES**.

6 As to the meaning of 'relevant licensing authority' see PARA 116 note 3. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

7 Ie any order made under the Licensing Act 2003 s 129: see PARA 129.

8 Licensing Act 2003 s 131(2). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.

9 Licensing Act 2003 s 131(3).

10 Ie under the Criminal Justice Act 1988 s 36: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 55 et seq.

11 Ie under the Criminal Justice Act 1988 s 36(1): see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 57.

12 Licensing Act 2003 s 131(4).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(5) PERSONAL LICENCES/(vi) Conviction of Licence Holder for Relevant Offence/131. Licence holder's duty to notify licensing authority of convictions.

131. Licence holder's duty to notify licensing authority of convictions.

Where the holder of a personal licence¹ is convicted of a relevant offence², in a case where the court by or before which he is convicted is not aware of the existence of that personal licence³, or is convicted of a foreign offence⁴, the holder must:

- 487 (1) as soon as reasonably practicable after the conviction, give the relevant licensing authority⁵ a notice containing details of the nature and date of the conviction, and any sentence imposed on him in respect of it; and
- 488 (2) as soon as reasonably practicable after the determination of any appeal against the conviction or sentence, or of any reference to the Court of Appeal in respect of the case for review of the sentence as being unduly lenient⁶, give the relevant licensing authority a notice containing details of the determination⁷.

Such a notice must be accompanied by the personal licence or, if that is not practicable, a statement of the reasons for the failure to provide the licence⁸.

A person commits an offence if he fails, without reasonable excuse, to comply with these requirements⁹.

1 As to the meaning of 'personal licence' see PARA 114.

2 As to the meaning of 'relevant offence' see PARA 117.

3 Ie in a case where the Licensing Act 2003 s 131(1) (see PARA 130) does not apply.

4 As to the meaning of 'foreign offence' see PARA 117 note 2.

5 As to the meaning of 'relevant licensing authority' see PARA 116 note 3. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

6 Ie any reference under the Criminal Justice Act 1988 s 36: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 55 et seq.

7 Licensing Act 2003 s 132(1), (2). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.

8 Licensing Act 2003 s 132(3).

9 Licensing Act 2003 s 132(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 132(5). As to the standard scale see PARA 17 note 21.

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(i) Unauthorised Licensable Activities/132. Carrying on unauthorised licensable activities.

(6) OFFENCES

(i) Unauthorised Licensable Activities

132. Carrying on unauthorised licensable activities.

A person commits an offence if he carries on or attempts to carry on a licensable activity¹ on or from any premises² otherwise than under and in accordance with an authorisation³, or he knowingly allows a licensable activity to be so carried on⁴.

Where the licensable activity in question is the provision of regulated entertainment⁵, a person does not, however, commit an offence under the above provisions if his only involvement in the provision of the entertainment is that he performs in a play⁶, participates as a sportsman in an indoor sporting event⁷, boxes or wrestles in a boxing or wrestling entertainment⁸, performs live music⁹, plays recorded music, performs dance, or does something coming within the description of entertainment similar to music and dance¹⁰.

A person guilty of an offence under the above provisions is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £20,000, or to both¹¹. In proceedings against a person for such an offence it is, however, a defence that his act was due to a mistake, or to reliance on information given to him, or to an act or omission by another person¹², or to some other cause beyond his control, and that he took all reasonable precautions and exercised all due diligence¹³ to avoid committing the offence¹⁴.

1 As to licensable activities see PARA 28.

2 As to the meaning of 'premises' see PARA 27 note 12.

3 In the Licensing Act 2003 Pt 7 (ss 136-159), 'authorisation' means: (1) a premises licence (see PARA 54 et seq); (2) a club premises certificate (see PARA 85 et seq); or (3) a temporary event notice (see PARA 108 et seq) in respect of which the conditions of s 98(2)-(4) (see PARA 108) are satisfied: ss 136(5), 159.

4 Licensing Act 2003 s 136(1).

5 As to the provision of regulated entertainment see PARA 31.

6 As to the meaning of 'performance of a play' see PARA 31 note 13 (definition applied by the Licensing Act 2003 s 136(3)).

7 As to the meaning of 'indoor sporting event' see PARA 31 note 15 (definition applied by the Licensing Act 2003 s 136(3)).

8 As to the meaning of 'boxing or wrestling entertainment' see PARA 31 note 16 (definition applied by the Licensing Act 2003 s 136(3)).

9 As to the meaning of 'music' see PARA 31 note 9 (definition applied by the Licensing Act 2003 s 136(3)).

10 Licensing Act 2003 s 136(2).

11 Licensing Act 2003 s 136(4).

12 An employee falls within the expression 'another person' if he is not part of the controlling mind and will of the company: see *Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL, construing the same words under the Trade Descriptions Act 1968 s 24.

It is the physical act or default of the other person which matters: see *Hotchin v Hindmarsh* [1891] 2 QB 181, DC; *Melias Ltd v Preston* [1957] 2 QB 380, [1957] 2 All ER 449, DC.

For a general discussion of 'act or default' see *Tesco Supermarkets Ltd v Natrass*.

13 As to offences giving rise to a 'due diligence' defence see eg the Weights and Measures Act 1985 s 34(1); and **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 234.

14 Licensing Act 2003 s 139(1), (2)(a).

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

132 Carrying on unauthorised licensable activities

NOTE 4--Where a licensable activity is carried on outside the scope of a premises licence or in breach of the conditions of the licence, it is a question of fact whether it is carried on by the holder of the licence: *Hall & Woodhouse Ltd v Poole BC* [2009] EWHC 1587 (Admin), (2009) 173 JP 433, DC.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(i) Unauthorised Licensable Activities/133. Exposing or keeping alcohol for unauthorised sale.

133. Exposing or keeping alcohol for unauthorised sale.

A person commits an offence if, on any premises¹, he exposes for sale by retail any alcohol² in circumstances where the sale by retail of that alcohol on those premises would be an unauthorised licensable activity³; and for that purpose a licensable activity is unauthorised unless it is under and in accordance with an authorisation⁴. A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £20,000, or to both⁵; and the court by which a person is convicted of such an offence may order the alcohol in question, and any container for it, to be forfeited and either destroyed or dealt with in such other manner as the court may order⁶.

A person also commits an offence if he has in his possession or under his control alcohol which he intends to sell by retail or supply by or on behalf of a club to, or to the order of, a member of the club⁷ in circumstances where that activity would be an unauthorised licensable activity⁸; and for that purpose a licensable activity is unauthorised unless it is under and in accordance with an authorisation⁹. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale¹⁰; and the court by which a person is convicted of such an offence may order the alcohol in question, and any container for it, to be forfeited and either destroyed or dealt with in such other manner as the court may order¹¹.

In proceedings against a person for any offence under the above provisions, it is, however, a defence that his act was due to a mistake, or to reliance on information given to him, or to an act or omission by another person¹², or to some other cause beyond his control, and that he took all reasonable precautions and exercised all due diligence¹³ to avoid committing the offence¹⁴.

1 As to the meaning of 'premises' see PARA 27 note 12.

2 As to the meanings of 'sale by retail' and 'alcohol' see PARA 30.

3 Licensing Act 2003 s 137(1). As to the meaning of 'licensable activity' see PARA 28.

4 Licensing Act 2003 s 137(2). As to the meaning of 'authorisation' see PARA 132 note 3.

5 Licensing Act 2003 s 137(3).

6 Licensing Act 2003 s 137(4).

7 As to supply to members or guests of a club see s 64; and PARA 86 at heads (a)-(c).

8 Licensing Act 2003 s 138(1), (3).

9 Licensing Act 2003 s 138(2).

10 Licensing Act 2003 s 138(4). As to the standard scale see PARA 17 note 21.

11 Licensing Act 2003 s 138(5).

12 See PARA 132 note 12.

13 See PARA 132 note 13.

14 Licensing Act 2003 s 139(1), (2)(b), (c).

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(ii) Smuggled Goods/134. Smuggled goods.

(ii) Smuggled Goods

134. Smuggled goods.

A person to whom heads (1) to (4) below apply commits an offence if he knowingly¹ keeps or allows to be kept, on any relevant premises², any goods which have been imported without payment of duty or which have otherwise been unlawfully imported³. The persons who may commit this offence are:

- 489 (1) any person who works at the premises in a capacity, whether paid or unpaid, which gives him authority to prevent the keeping of the goods on the premises;
- 490 (2) in the case of licensed premises, the holder of a premises licence in respect of the premises and the designated premises supervisor⁴, if any, under such a licence;
- 491 (3) in the case of premises in respect of which a club premises certificate has effect, any member or officer of the club which holds the certificate who is present at the time when the goods are kept on the premises in a capacity which enables him to prevent them being so kept; and
- 492 (4) in the case of premises which may be used⁵ for a permitted temporary activity, the premises user⁶ in relation to the temporary event notice⁷ in question⁸.

A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale⁹; and the court by which a person is convicted of such an offence may order the goods in question, and any container for them, to be forfeited¹⁰ and either destroyed or dealt with in such other manner as the court may order¹¹.

1 As to mens rea generally, and the meaning of 'knowingly' in the context of the criminal law, see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 8.

2 'Relevant premises' means: (1) licensed premises; or (2) premises in respect of which there is in force a club premises certificate; or (3) premises which may be used for a permitted temporary activity by virtue of the Licensing Act 2003 Pt 5 (ss 98-110) (see PARA 108 et seq): s 159. 'Licensed premises' means premises in respect of which a premises licence has effect: s 193. As to the meaning of 'premises' see PARA 27 note 12; as to premises licences see PARA 53 et seq; and as to club premises certificates and clubs see PARA 85 et seq.

3 Licensing Act 2003 s 144(1). As to offering goods for sale as smuggled goods see further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 553.

4 As to the meaning of 'designated premises supervisor' see PARA 55 note 4.

5 Ie by virtue of the Licensing Act 2003 Pt 5: see PARA 108 et seq.

6 As to the meaning of 'premises user' see PARA 108 note 19.

7 As to the meaning of 'temporary event notice' see PARA 108.

8 See the Licensing Act 2003 s 144(2).

9 Licensing Act 2003 s 144(3). As to the standard scale see PARA 17 note 21.

10 As to the penalties for offering smuggled goods for sale, including forfeiture, see further **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1074.

11 Licensing Act 2003 s 144(4).

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(iii) Drunkenness and Disorderly Conduct/A. OFFENCES UNDER THE LICENSING ACT 2003/135. Allowing disorderly conduct on licensed premises etc.

(iii) Drunkenness and Disorderly Conduct

A. OFFENCES UNDER THE LICENSING ACT 2003

135. Allowing disorderly conduct on licensed premises etc.

A person to whom heads (1) to (4) below apply commits an offence if he knowingly allows disorderly conduct¹ on relevant premises². The persons who may commit this offence are:

- 493 (1) any person who works at the premises in a capacity, whether paid or unpaid, which authorises him to prevent the conduct;
- 494 (2) in the case of licensed premises³, the holder of a premises licence⁴ in respect of the premises and the designated premises supervisor⁵, if any, under such a licence;
- 495 (3) in the case of premises in respect of which a club premises certificate⁶ has effect, any member or officer of the club which holds the certificate who at the time when the conduct takes place is present on the premises in a capacity which enables him to prevent it; and
- 496 (4) in the case of premises which may be used⁷ for a permitted temporary activity⁸, the premises user⁹ in relation to the temporary event notice¹⁰ in question¹¹.

A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale¹².

1 See the Violent Crime Reduction Act 2006 s 14(2) (not yet in force), which provides that for the purposes of Pt 1 Ch 1 (ss 1-14) (not yet in force) references to protecting persons from criminal or disorderly conduct include references to protecting their property from unlawful loss or damage. As to mens rea generally, and the meaning of 'knowingly' in the context of the criminal law, see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 8.

2 See the Licensing Act 2003 s 140(1). As to the meaning of 'relevant premises' see PARA 134 note 2. Section 140 partially re-enacts some of the offences under the Licensing Act 1964 ss 172(1), 172A(1)(repealed).

3 As to the meaning of 'licensed premises' see PARA 134 note 2.

4 As to the meaning of 'premises licence' see PARA 53 note 1.

5 As to the meaning of 'designated premises supervisor' see PARA 55 note 4.

6 As to the meaning of 'club premises certificate' see PARA 85.

7 Ie by virtue of the Licensing Act 2003 Pt 5 (ss 98-110): see PARA 108 et seq.

8 As to the meaning of 'permitted temporary activity' see PARA 108.

9 As to the meaning of 'premises user' see PARA 108 note 19.

10 As to the meaning of 'temporary event notice' see PARA 108.

11 See the Licensing Act 2003 s 140(2).

12 Licensing Act 2003 s 140(3). As to the standard scale see PARA 17 note 21.

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

135 Allowing disorderly conduct on licensed premises etc

NOTE 1--Violent Crime Reduction Act 2006 s 14(2) in force in relation to specified local justice areas on 1 April 2010: SI 2010/469. Violent Crime Reduction Act 2006 Pt 1 Ch 1 partly in force: SI 2009/1840, 2010/469.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(iii) Drunkenness and Disorderly Conduct/A. OFFENCES UNDER THE LICENSING ACT 2003/136. Sale of alcohol to a person who is drunk.

136. Sale of alcohol to a person who is drunk.

A person to whom heads (1) to (4) below apply commits an offence if, on relevant premises¹, he knowingly sells or attempts to sell alcohol² to a person³ who is drunk, or allows alcohol to be sold to such a person⁴. The persons who may commit this offence are:

- 497 (1) any person who works at the premises in a capacity, whether paid or unpaid, which gives him authority to sell the alcohol concerned;
- 498 (2) in the case of licensed premises⁵, the holder of a premises licence⁶ in respect of the premises and the designated premises supervisor⁷, if any, under such a licence;
- 499 (3) in the case of premises in respect of which a club premises certificate⁸ has effect, any member or officer of the club which holds the certificate who at the time when the sale, or attempted sale, takes place is present on the premises in a capacity which enables him to prevent it; and
- 500 (4) in the case of premises which may be used⁹ for a permitted temporary activity¹⁰, the premises user¹¹ in relation to the temporary event notice¹² in question¹³.

A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale¹⁴.

1 As to the meaning of 'relevant premises' see PARA 134 note 2.

2 As to the meaning of 'alcohol' see PARA 30.

3 The Licensing Act 2003 s 141 (see the text and notes 4-14) applies in relation to the supply of alcohol by or on behalf of a club to or to the order of a member of the club as it applies in relation to the sale of alcohol: s 141(3). As to supply to members or guests of a club see s 64; and PARA 86 at heads (a)-(c).

4 See the Licensing Act 2003 s 141(1).

Section 141 partially re-enacts the offences under the Licensing Act 1964 ss 172(3), 172A(3) (repealed). Under those provisions and their predecessors, when the sober companion of a drunken person ordered and paid for intoxicating liquor which was supplied to the drunken person, the licence holder might be convicted of selling to the drunken person: see *Scatchard v Johnson* (1888) 57 LJMC 41, DC. The licensee was liable even where his manager, contrary to express general instructions, supplied liquor to a drunken person: *Police Comrs v Cartman* [1896] 1 QB 655; *Worth v Brown* (1896) 62 JP 658. Where a sober customer ordered two glasses of liquor, it might be a reasonable step for preventing drunkenness for the barman to ascertain for whom the second was intended; and if he failed to do so, and it was in fact intended for a drunken person, a conviction might be justified: *Radford v Williams* (1914) 78 JP 90.

5 As to the meaning of 'licensed premises' see PARA 134 note 2.

6 As to the meaning of 'premises licence' see PARA 53 note 1.

7 As to the meaning of 'designated premises supervisor' see PARA 55 note 4.

8 As to the meaning of 'club premises certificate' see PARA 85.

9 Ie by virtue of the Licensing Act 2003 Pt 5 (ss 98-110): see PARA 108 et seq.

- 10 As to the meaning of 'permitted temporary activity' see PARA 108.
- 11 As to the meaning of 'premises user' see PARA 108 note 19.
- 12 As to the meaning of 'temporary event notice' see PARA 108.
- 13 See the Licensing Act 2003 s 141(2).
- 14 Licensing Act 2003 s 141(4). As to the standard scale see PARA 17 note 21.

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(iii) Drunkenness and Disorderly Conduct/A. OFFENCES UNDER THE LICENSING ACT 2003/137. Obtaining alcohol for a person who is drunk.

137. Obtaining alcohol for a person who is drunk.

A person commits an offence if, on relevant premises¹, he knowingly obtains or attempts to obtain alcohol² for consumption on those premises by a person who is drunk³. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale⁴.

1 As to the meaning of 'relevant premises' see PARA 134 note 2.

2 As to the meaning of 'alcohol' see PARA 30.

3 Licensing Act 2003 s 142(1).

Section 142 effectively re-enacts the offence under the Licensing Act 1964 s 173(1) (repealed).

4 Licensing Act 2003 s 142(2). As to the standard scale see PARA 17 note 21.

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(iii) Drunkenness and Disorderly Conduct/A. OFFENCES UNDER THE LICENSING ACT 2003/138. Failure to leave licensed premises etc.

138. Failure to leave licensed premises etc.

A person who is drunk or disorderly commits an offence if, without reasonable excuse, he fails to leave relevant premises¹ when requested to do so by a constable² or by a person to whom heads (1) to (4) below apply, or he enters or attempts to enter relevant premises after a constable or a person to whom those heads apply has requested him not to enter³. The persons who may request him to leave or not to enter are:

- 501 (1) any person who works at the premises in a capacity, whether paid or unpaid, which authorises him to make such a request;
- 502 (2) in the case of licensed premises⁴, the holder of a premises licence⁵ in respect of the premises and the designated premises supervisor⁶, if any, under such a licence;
- 503 (3) in the case of premises in respect of which a club premises certificate⁷ has effect, any member or officer of the club which holds the certificate who is present on the premises in a capacity which enables him to make such a request; and
- 504 (4) in the case of premises which may be used⁸ for a permitted temporary activity⁹, the premises user¹⁰ in relation to the temporary event notice¹¹ in question¹².

A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale¹³.

On being requested to do so by a person to whom heads (1) to (4) above apply, a constable must help to expel from relevant premises a person who is drunk or disorderly, or help to prevent such a person from entering relevant premises¹⁴.

Under the common law, a licence holder may request any person whom he does not wish to remain on the premises to leave them and may eject him if he refuses to do so¹⁵.

1 As to the meaning of 'relevant premises' see PARA 134 note 2.

2 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

3 Licensing Act 2003 s 143(1).

Section 143 partially re-enacts the provisions of the Licensing Act 1964 s 174 (repealed). A person who was not drunk or disorderly at the time when he was requested to leave did not come within those provisions: see *Dallimore v Tutton* (1898) 78 LT 469, DC. Where, however, a person is in an unfit condition to be on the premises, the licence holder is justified in insisting upon his leaving: see further PARA 193.

4 As to the meaning of 'licensed premises' see PARA 134 note 2.

5 As to the meaning of 'premises licence' see PARA 53 note 1.

6 As to the meaning of 'designated premises supervisor' see PARA 55 note 4.

7 As to the meaning of 'club premises certificate' see PARA 85.

8 ie by virtue of the Licensing Act 2003 Pt 5 (ss 98-110): see PARA 108 et seq.

9 As to the meaning of 'permitted temporary activity' see PARA 108.

10 As to the meaning of 'premises user' see PARA 108 note 19.

11 As to the meaning of 'temporary event notice' see PARA 108.

12 Licensing Act 2003 s 143(2).

13 Licensing Act 2003 s 143(3). As to the standard scale see PARA 17 note 21.

Where several persons are charged on one information for refusing to quit, this is a mere irregularity, and may be waived, and a separate conviction of each would be good: *Wells v Cheyney* (1871) 36 JP 198. A constable may lay the information although he has not witnessed the offence: *R v Worcester Justices* (1894, unreported).

14 See the Licensing Act 2003 s 143(4). It seems that a person to whom heads (1)-(4) in the text apply is not liable for any excess of violence that may be used by the constable in removing the objectionable person: see *Sealey v Tandy* [1902] 1 KB 296, DC.

15 *Sealey v Tandy* [1902] 1 KB 296, DC.

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

138 Failure to leave licensed premises etc

NOTE 14--See *Semple v Luton and South Bedfordshire Magistrates' Court* [2009] EWHC 3241 (Admin), [2009] 2 All ER 353, DC (constable could use reasonable force when required to assist licence-holder to eject customer).

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(iii) Drunkenness and Disorderly Conduct/B. OTHER OFFENCES/139. Prohibition on sale of alcohol to habitual drunkards.

B. OTHER OFFENCES

139. Prohibition on sale of alcohol to habitual drunkards.

Where a person is convicted of one of certain specific offences relating to drunkenness¹ and such person has, during the period of 12 months immediately preceding the date of the offence, been convicted on three occasions of such an offence, the court may order that notice of the conviction, with such particulars as may be prescribed by a Secretary of State², be sent to the police authority³ for the police area in which the court is situated⁴. The court must inform the convicted person that the notice is to be sent⁵.

The convicted person commits an offence if, within the period of three years beginning with the day of his conviction ('the three year period'), he buys or obtains, or attempts to buy or obtain, alcohol⁶ on relevant premises⁷. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale⁸.

A person to whom heads (1) to (4) below apply commits an offence if, within the three year period, he knowingly sells, supplies or distributes alcohol on relevant premises to, or for consumption by, the convicted person, or allows the sale, supply or distribution of alcohol on relevant premises to him or for his consumption⁹. The persons who may commit this offence are:

- 505 (1) any person who works at the premises in a capacity, whether paid or unpaid, which gives him authority to sell, supply or distribute the alcohol concerned;
- 506 (2) in the case of licensed premises¹⁰, the holder of a premises licence¹¹ which authorises the sale or supply of alcohol and the designated premises supervisor¹², if any, under such a licence;
- 507 (3) in the case of premises in respect of which a club premises certificate¹³ authorising the sale or supply of alcohol has effect, any member or officer of the club which holds the certificate who is present on the premises at the time the sale, supply or distribution takes place in a capacity which enables him to prevent it; and
- 508 (4) in the case of premises which may be used¹⁴ for a permitted temporary activity¹⁵, the premises user¹⁶ in respect of a temporary event notice¹⁷ authorising the sale or supply of alcohol¹⁸.

A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale¹⁹.

Regulations must be made by the police authority for the purpose of securing the giving of information to:

- 509 (a) the holder of a premises licence which authorises the sale or supply of alcohol;
- 510 (b) the designated premises supervisor, if any, under such a licence;
- 511 (c) the holder of a club premises certificate authorising the sale or supply of alcohol; and
- 512 (d) the premises user in relation to a temporary event notice authorising the sale or supply of alcohol,

of orders made under the above provisions, and for assisting in the identification of convicted persons²⁰.

1 ie an offence mentioned in the Inebriates Act 1898 s 30, Sch 1: see the Licensing Act 1902 s 6(1) (as amended: see note 4). The offences are: (1) being found drunk in a highway or other public place, whether a building or not, or on licensed premises, or being drunk while in charge, on any highway or other public place, of any carriage, horse, cattle or steam-engine, or in possession of any loaded firearms (ie an offence under the Licensing Act 1872 s 12); (2) being intoxicated while driving a hackney carriage (ie an offence under the Town Police Clauses Act 1847 s 61); (3) being drunk during employment as a driver of a hackney carriage, or as a driver or conductor of a stage carriage in the metropolitan police district (ie an offence under the London Hackney Carriages Act 1843 s 28); (4) being drunk and disorderly and persisting, after being refused admission on that account, in attempting to enter a ship, or being drunk and disorderly and refusing to leave a ship when requested (see the Merchant Shipping Act 1995 s 101(a), (b)); and (5) failing to leave licensed premises etc when asked to do so, or entering, or attempting to enter, licensed premises etc when asked not to do so (ie an offence under the Licensing Act 2003 s 143 (see PARA 138)); and (6) being found drunk in any highway or other public place while having the charge of a child apparently under the age of seven years (ie an offence under the Licensing Act 1902 s 2); Inebriates Act 1898 Sch 1 (amended by the Statute Law (Repeals) Act 1976; and the Licensing Act 2003 Sch 6 para 6, Sch 7); Licensing Act 1902 s 2(3) (amended by the Statute Law (Repeals) Act 1976); Interpretation Act 1978 s 17(2).

2 For the prescribed form of notice see the Order of the Secretary of State Prescribing Forms under the Licensing Act 1902, SR & O 1902/831 (amended by SI 2001/1098). As to the Secretary of State see PARA 2.

3 As to police authorities see **POLICE**.

4 Licensing Act 1902 s 6(1) (amended by the Statute Law (Repeals) Act 1976 Sch 2 Pt I; the Police and Magistrates' Courts Act 1994 Sch 9 Pt I).

5 See the Licensing Act 1902 s 6(2), (2A) (s 6(2) substituted, and s 6(2A)-(2E) added, by the Licensing Act 2003 Sch 6 paras 7, 8(1), (2)).

6 As to the meaning of 'alcohol' see PARA 30 (definition applied by the Licensing Act 1902 s 6(5) (added by the Licensing Act 2003 Sch 6 paras 7, 8(1), (4))).

7 Licensing Act 1902 s 6(2B) (as added: see note 5). For these purposes, 'relevant premises' means premises which are relevant premises within the meaning of the Licensing Act 2003 s 159 (see PARA 134 note 2) and on which alcohol may be lawfully sold or supplied: Licensing Act 1902 s 6(5) (as added: see note 6).

8 Licensing Act 1902 s 6(2E)(a) (as added: see note 5). As to the standard scale see PARA 17 note 21.

9 Licensing Act 1902 s 6(2C) (as added: see note 5).

10 As to the meaning of 'licensed premises' see PARA 134 note 2 (definition as applied: see note 6).

11 As to the meaning of 'premises licence' see PARA 53 note 1 (definition as applied: see note 6).

12 As to the meaning of 'designated premises supervisor' see PARA 55 note 4 (definition as applied: see note 6).

13 As to the meaning of 'club premises certificate' see PARA 85 (definition as applied: see note 6).

14 ie by virtue of the Licensing Act 2003 Pt 5 (ss 98-110): see PARA 108 et seq.

15 As to the meaning of 'permitted temporary activity' see PARA 108 (definition as applied: see note 6).

16 As to the meaning of 'premises user' see PARA 108 note 19 (definition as applied: see note 6).

17 As to the meaning of 'temporary event notice' see PARA 108 (definition as applied: see note 6).

18 Licensing Act 1902 s 6(2D) (as added: see note 5).

19 Licensing Act 1902 s 6(2E)(b) (as added: see note 5).

20 Licensing Act 1902 s 6(3), (4) (s 6(3) amended, and s 6(4) added, by the Licensing Act 2003 Sch 6 paras 7, 8(1), (3), (4)). The regulations are not made by statutory instrument and are consequently not dealt with in this work.

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(iii) Drunkenness and Disorderly Conduct/B. OTHER OFFENCES/140. Other offences.

140. Other offences.

There are certain other offences relating to drunken persons which are dealt with in other titles of this work¹.

It is an offence to be drunk in charge of a carriage, a horse, cattle or a steam engine on any highway or other public place², or to drive or attempt to drive a motor vehicle while unfit to drive through drink, or to be in charge of a motor vehicle on a road or other public place while unfit to drive through drink³, or to drive or attempt to drive or be in charge of a motor vehicle on a road or other public place with a blood-alcohol concentration above the prescribed limit⁴, or to be unfit through drink when riding a cycle on a road or other public place⁵. It is also an offence to be drunk when in possession of any loaded firearms⁶; or to be found drunk in any highway or other public place, or on any licensed premises, while having the charge of a child apparently under the age of seven years⁷.

It is an offence for a person to enter an aircraft when drunk or to be drunk in any aircraft, or for any person acting as a member of the crew of any aircraft to be in a state whereby his capacity is impaired by reason of drink⁸. It is also an offence for a ship's pilot to endanger a ship, or a person on board, by reason of drunkenness⁹. Similarly, a person working on a railway or tramway in a capacity in which he can control or affect the movement of a vehicle, or in a maintenance capacity, is guilty of an offence if he is unfit to carry out his work through drink¹⁰.

Any person who sells or transfers a firearm or ammunition to, or repairs, proves or tests any firearm or ammunition for, another person whom he knows or has reasonable cause to believe is drunk is guilty of an offence¹¹.

A juror who is not available when called on to serve or who is unfit for service by reason of drink is guilty of an offence¹².

A person subject to service law commits an offence if, due to the influence of alcohol, he is unfit to be entrusted with his duty or any duty which he might reasonably expect to be called upon to perform or his behaviour is disorderly or likely to bring discredit to Her Majesty's forces¹³.

Under the Criminal Justice and Police Act 2001, a local authority has power to identify by order any public place in its area if the authority is satisfied that either nuisance or annoyance to members of the public or a section of the public, or disorder, has been associated with the consumption of alcohol in that place¹⁴. A person whom a constable¹⁵ reasonably believes to be, or to have been, consuming, alcohol in a public place designated by such an order¹⁶, or to be intending to consuming alcohol there, commits an offence if he fails to comply with a requirement by the constable not to consume alcohol (or anything which the constable reasonably believes to be alcohol) and to surrender anything in his possession which is, or which the constable reasonably believes to be, alcohol or a container for alcohol¹⁷.

1 As to drunkenness in relation to criminal capacity see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 28-30.

2 See the Licensing Act 1872 s 12; the Licensing Act 1902 s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

3 See the Road Traffic Act 1988 s 4; and **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 975 et seq.

- 4 See the Road Traffic Act 1988 s 5; and **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 975 et seq.
- 5 See the Road Traffic Act 1988 s 30; the Road Traffic Offenders Act 1988 s 5; and **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 975 et seq.
- 6 See the Licensing Act 1872 s 12; the Licensing Act 1902 s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.
- 7 See the Licensing Act 1902 s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.
- 8 See the Air Navigation Order 2005, SI 2005/1970, art 75; and **AIR LAW** vol 2 (2008) PARA 525.
- 9 See the Pilotage Act 1987 s 21.
- 10 See the Transport and Works Act 1992 s 27; and **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 377.
- 11 See the Firearms Act 1968 s 25; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 671.
- 12 See the Juries Act 1974 s 20; and **JURIES** vol 61 (2010) PARA 811.
- 13 See the Armed Forces Act 2006 s 20; and **ARMED FORCES**.
- 14 See the Criminal Justice and Police Act 2001 s 13; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 577.
- 15 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.
- 16 A place is not a designated public place or a part of such a place if it is, inter alia: (1) premises in respect of which a premises licence (within the meaning of the Licensing Act 2003: see PARA 53 note 1) has effect which authorises the premises to be used for the sale or supply of alcohol; (2) premises in respect of which a club premises certificate (within the meaning of that Act: see PARA 85) has effect which certifies that the premises may be used by the club for the sale or supply of alcohol; (3) a place within the curtilage of premises within head (1) or head (2) above; (4) premises which by virtue of Pt 5 (ss 98-110) (see PARA 108 et seq) may for the time being be used for the supply of alcohol or which, by virtue of Pt 5, could have been so used within the last 30 minutes: see the Criminal Justice and Police Act 2001 s 14(1)(a)-(c) (substituted by the Licensing Act 2003 Sch 6 paras 119, 123(1), (2)(a); the Criminal Justice and Police Act 2001 s 14(1)(a) further substituted, and s 14(1)(aa) added, by the Violent Crime Reduction Act 2006 s 26(1), (2)(a)); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 577.
- 17 See the Criminal Justice and Police Act 2001 s 12; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 577.

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(iii) Drunkenness and Disorderly Conduct/B. OTHER OFFENCES/141. Exclusion of persons convicted of certain offences from licensed premises.

141. Exclusion of persons convicted of certain offences from licensed premises.

At the date at which this volume states the law, the following provisions have effect. Where a court by or before which a person is convicted of an offence committed on licensed premises¹ is satisfied that in committing that offence he resorted to violence or offered or threatened to resort to violence, the court may make an exclusion order prohibiting him from entering those premises or any other specified premises², without the express consent of the licensee³ of the premises or his servant or agent⁴.

An exclusion order may be made either in addition to any sentence which is imposed in respect of the offence of which the person is convicted, or in addition to an order discharging him absolutely or conditionally⁵ but not otherwise⁶. An exclusion order has effect for such period, not less than three months or more than two years, as is specified in the order, unless it is terminated by the court⁷.

A person who enters any premises in breach of an exclusion order is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding one month or both⁸. The court by which a person is convicted of such an offence must consider whether or not the exclusion order should continue in force, and may, if it thinks fit, by order terminate the exclusion order or vary it by deleting the name of any specified premises, but an exclusion order is not otherwise to be affected by a person's conviction for such an offence⁹.

Without prejudice to any other right to expel a person from premises, the licensee of licensed premises or his servant or agent may expel from those premises any person who has entered or whom he reasonably suspects of having entered the premises in breach of an exclusion order; and a constable must on the demand of the licensee or his servant or agent help to expel from licensed premises any person whom the constable reasonably suspects of having entered in breach of an exclusion order¹⁰.

As from a day to be appointed under the Violent Crime Reduction Act 2006¹¹, the above provisions are repealed¹². They will be replaced by powers to make drinking banning orders under that 2006 Act¹³, which are discussed elsewhere in this work¹⁴.

A post-conviction anti-social behaviour order ('ASBO')¹⁵ may also prohibit an offender from entering any, or specified, licensed premises¹⁶. An ASBO cannot be made in addition to an order for the conditional discharge of the offender¹⁷.

Where a person is sentenced to a community order¹⁸, the court may impose an exclusion requirement prohibiting a person from entering a place specified in the order for a period so specified, which must not be for more than two years¹⁹.

1 'Licensed premises' means premises in respect of which there is in force a premises licence under the Licensing Act 2003 authorising the supply of alcohol (within the meaning of s 14: see PARA 30) for consumption on the premises: Licensed Premises (Exclusion of Certain Persons) Act 1980 s 4(1) (definition amended by the Licensing Act 2003 Sch 6 para 74). As to premises licences see PARA 53. As to the prospective repeal of the Licensed Premises (Exclusion of Certain Persons) Act 1980 see the text and notes 11-12.

2 'Specified premises', in relation to an exclusion order, means any licensed premises which the court may specify by name and address in the order: Licensed Premises (Exclusion of Certain Persons) Act 1980 s 4(1)

(prospectively repealed: see the text and notes 11-12). If appropriate, the specified premises may include all the public houses and clubs in a town, city or borough: see *R v Arrowsmith* [2003] EWCA Crim 701, [2003] 2 Cr App Rep (S) 301, [2003] Crim LR 412.

3 'Licensee' in relation to any licensed premises means the holder of the licence granted in respect of those premises: Licensed Premises (Exclusion of Certain Persons) Act 1980 s 4(1) (prospectively repealed: see the text and notes 11-12).

4 Licensed Premises (Exclusion of Certain Persons) Act 1980 s 1(1) (prospectively repealed: see the text and notes 11-12). Where a court makes an exclusion order or an order terminating or varying an exclusion order, the proper officer of the court must send a copy of the order to the licensee of the premises to which the order relates: s 4(3) (amended by the Access to Justice Act 1999 Sch 13 para 94(1), (2); and prospectively repealed (see the text and notes 11-12)). Such proper officer in a magistrates' court in England and Wales is the designated officer for the court and in a Crown Court is the appropriate officer: see the Licensed Premises (Exclusion of Certain Persons) Act 1980 s 4(4) (added by the Access to Justice Act 1999 Sch 13 para 94(1), (3); amended by the Courts Act 2003 Sch 8 para 200; and prospectively repealed (see the text and notes 11-12)).

5 Ie notwithstanding the provisions of the Powers of Criminal Courts (Sentencing) Act 2000 ss 12, 14 (cases in which absolute and conditional discharges may be made, and their effect): see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARAS 40-41.

6 Licensed Premises (Exclusion of Certain Persons) Act 1980 s 1(2) (amended by the Criminal Justice Act 1991 Sch 11 para 23; and the Powers of Criminal Courts Sentencing) Act 2000 Sch 9 para 60; and prospectively repealed (see the text and notes 11-12)). An exclusion order may not be made otherwise: see *R v Grady* [1990] Crim LR 608, 12 Cr App Rep (S) 152, CA; and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 317.

7 Licensed Premises (Exclusion of Certain Persons) Act 1980 s 1(3) (prospectively repealed: see the text and notes 11-12). The order has effect for this period unless it is terminated under s 2(2) (see the text and note 9).

8 Licensed Premises (Exclusion of Certain Persons) Act 1980 s 2(1) (amended by the Criminal Justice Act 1982 s 46; and prospectively repealed (see the text and notes 11-12)). As to the standard scale see PARA 17 note 21.

As from a day to be appointed, the Licensed Premises (Exclusion of Certain Persons) Act 1980 s 2(1) is further amended so as to refer to 51 weeks instead of one month: s 2(1) (as so amended; and prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 27, as from a day to be appointed under s 336(3); at the date at which this volume states the law, no such day had been appointed and that further amendment was not in force).

9 Licensed Premises (Exclusion of Certain Persons) Act 1980 s 2(2) (prospectively repealed: see the text and notes 11-12). See also note 4.

10 Licensed Premises (Exclusion of Certain Persons) Act 1980 s 3 (prospectively repealed: see the text and notes 11-12). As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

11 Ie under the Violent Crime Reduction Act 2006 s 66(2).

12 See the Violent Crime Reduction Act 2006 Sch 5. At the date at which this volume states the law, no such day had been appointed and that repeal was not in force.

13 Ie powers to make orders under the Violent Crime Reduction Act 2006 s 3, s 4 or s 6 (not yet in force): see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARAS 320, 526-527.

14 See the Violent Crime Reduction Act 2006 Pt 1 Ch 1 (ss 1-14) (not yet in force); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARAS 319-325, 526-529.

15 Ie an order made under the Crime and Disorder Act 1998 s 1C(2): see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 304.

16 This is implicit in the wide powers under the Crime and Disorder Act 1998 s 1C(2), which empowers the court to make 'an order which prohibits the offender from doing anything described in the order'. Any such prohibition must not, however, be so wide as to be disproportionate: see *N v DPP* [2007] EWHC 883 (Admin), (2007) 171 JP 393.

17 See the Crime and Disorder Act 1998 s 1C(4)(b); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 304.

18 Ie under the Criminal Justice Act 2003 s 177: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 163 et seq.

19 See the Criminal Justice Act 2003 s 205; and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 276. An alcohol treatment requirement may also be imposed: see s 212; and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 281.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(iv) Children and Alcohol

A. OFFENCES UNDER THE LICENSING ACT 2003

142. Unaccompanied children prohibited from certain premises.

A person to whom heads (i) to (iv) below apply commits an offence if:

- 513 (1) knowing that relevant premises¹ are:
- 25
39. (a) exclusively or primarily used for the supply of alcohol² for consumption on the premises; or
40. (b) open for the purposes of being used for the supply of alcohol for consumption on the premises by virtue of the statutory provisions relating to permitted temporary activities³ and, at the time the temporary event notice⁴ in question has effect, they are exclusively or primarily used for such supplies;
- 26
- 514 he allows an unaccompanied child⁵ to be on the premises at a time when they are open for the purposes of being used for the supply of alcohol for consumption there; or
- 515 (2) he allows an unaccompanied child to be on relevant premises at a time between the hours of midnight and 5 am when the premises are open for the purposes of being used for the supply of alcohol for consumption there⁶.

The persons who may commit such an offence are:

- 516 (i) any person who works at the premises in a capacity, whether paid or unpaid, which authorises him to request the unaccompanied child to leave the premises;
- 517 (ii) in the case of licensed premises⁷, the holder of a premises licence⁸ in respect of the premises and the designated premises supervisor⁹, if any, under such a licence;
- 518 (iii) in the case of premises in respect of which a club premises certificate¹⁰ has effect, any member or officer of the club which holds the certificate who is present on the premises in a capacity which enables him to make such a request; and
- 519 (iv) in the case of premises which may be used¹¹ for a permitted temporary activity, the premises user¹² in respect of a temporary event notice in question¹³.

A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale¹⁴.

No such offence is committed if the unaccompanied child is on the premises solely for the purpose of passing to or from some other place to or from which there is no other convenient means of access or egress¹⁵.

Where a person is charged with such an offence by reason of his own conduct it is a defence that he believed that the unaccompanied child was aged 16 or over or that an individual accompanying him was aged 18 or over, and that either he had taken all reasonable steps to

establish the individual's age¹⁶, or nobody could reasonably have suspected from the individual's appearance that he was aged under 16 or, as the case may be, under 18¹⁷.

Where a person ('the accused') is charged with such an offence by reason of the act or default of some other person¹⁸, it is a defence that the accused exercised all due diligence¹⁹ to avoid committing it²⁰.

1 As to the meaning of 'relevant premises' see PARA 134 note 2.

2 For these purposes, 'supply of alcohol' means (1) the sale by retail of alcohol; or (2) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club: Licensing Act 2003 s 145(10). As to the meanings of 'sale by retail' and 'alcohol' see PARA 30; and as to supply to members or guests of a club see s 64; and PARA 86 at heads (a)-(c).

3 Ie by virtue of the Licensing Act 2003 Pt 5 (ss 98-110): see PARA 108 et seq. As to the meaning of 'permitted temporary activities' see PARA 108.

4 As to the meaning of 'temporary event notice' see PARA 108.

5 For these purposes, 'child' means an individual aged under 16, and a child is unaccompanied if he is not in the company of an individual aged 18 or over: Licensing Act 2003 s 145(2).

6 See the Licensing Act 2003 s 145(1), (4).

7 As to the meaning of 'licensed premises' see PARA 134 note 2.

8 As to the meaning of 'premises licence' see PARA 53 note 1.

9 As to the meaning of 'designated premises supervisor' see PARA 55 note 4.

10 As to the meaning of 'club premises certificate' see PARA 85.

11 Ie by virtue of the Licensing Act 2003 Pt 5: see PARA 108 et seq.

12 As to the meaning of 'premises user' see PARA 108 note 19.

13 Licensing Act 2003 s 145(3).

14 Licensing Act 2003 s 145(9). As to the standard scale see PARA 17 note 21.

15 Licensing Act 2003 s 145(5).

16 For these purposes, a person is treated as having taken all reasonable steps to establish an individual's age if he asked the individual for evidence of his age, and the evidence would have convinced a reasonable person: Licensing Act 2003 s 145(7).

17 Licensing Act 2003 s 145(6).

18 See PARA 132 note 12.

19 See PARA 132 note 13.

20 Licensing Act 2003 s 145(8).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

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143. Sale of alcohol to children.

A person commits an offence if he sells alcohol¹ to an individual aged under 18².

A club commits an offence if alcohol is supplied by it or on its behalf:

- 520 (1) to, or to the order of, a member of the club who is aged under 18; or
- 521 (2) to the order of a member of the club, to an individual who is aged under 18³;

and a person commits an offence if he supplies alcohol on behalf of a club:

- 522 (a) to, or to the order of, a member of the club who is aged under 18; or
- 523 (b) to the order of a member of the club, to an individual who is aged under 18⁴.

A person guilty of any such offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale⁵.

Where a person is charged with an offence under the above provisions by reason of his own conduct it is a defence that he believed that the individual was aged 18 or over, and that either he had taken all reasonable steps to establish the individual's age⁶, or that nobody could reasonably have suspected from the individual's appearance that he was aged under 18⁷. Where a person ('the accused') is charged with such an offence by reason of the act or default of some other person⁸, it is a defence that the accused exercised all due diligence⁹ to avoid committing it¹⁰.

It is the duty of every local weights and measures authority¹¹ in England and Wales to enforce within its area the above provisions, so far as they apply to sales of alcohol made on or from premises¹² to which the public has access¹³. A weights and measures inspector¹⁴ may make, or authorise any person to make on his behalf, such purchases of goods as appear expedient for the purpose of determining whether those provisions are being complied with¹⁵.

1 As to the meaning of 'alcohol' see PARA 30.

2 Licensing Act 2003 s 146(1).

3 Licensing Act 2003 s 146(2). As to supply to members or guests of a club see s 64; and PARA 86 at heads (a)-(c).

4 Licensing Act 2003 s 146(3).

5 Licensing Act 2003 s 146(7). As to the standard scale see PARA 17 note 21.

6 For these purposes, a person is treated as having taken all reasonable steps to establish an individual's age if he asked the individual for evidence of his age, and the evidence would have convinced a reasonable person: Licensing Act 2003 s 146(5).

7 Licensing Act 2003 s 146(4).

8 See PARA 132 note 12.

9 See PARA 132 note 13. See further note 10.

10 Licensing Act 2003 s 146(6). Where the defence of due diligence is raised in connection with an unlawful sale by a junior employee, evidence such as the provision of written material designed to prevent under-age sales, a policy of requesting age identification from anyone who looks under 21 years old before selling alcohol to them, the fitting of a device to tills designed to prevent under-age sales of alcohol by requiring a sales assistant to be satisfied of an individual's age before a sale of alcohol can be effected, and the existence of records of previous occasions when the assistant refused to sell alcohol to a person because she believed that the individual was under-age is material in showing that the defendant has taken adequate steps to train and supervise the sales assistant: see *Davies v Carmarthenshire County Council* [2005] EWHC 464 (Admin), [2005] All ER (D) 71 (Mar), [2005] LLR 276. See also *Cambridgeshire County Council v Kama* [2006] EWHC 3148 (Admin), 171 JP 194, [2006] All ER (D) 277 (Nov) (a small corner shop cannot reasonably be expected to have in place all the systems that, for example, a supermarket would have in place; the absence of a refusals book is not necessarily indicative of a failure to exercise all due diligence). Both these cases were prosecutions under the previous law (offence of selling intoxicating liquor to a minor under the Licensing Act 1964 s 169A (repealed)).

11 As to weights and measures authorities see **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 20.

12 As to the meaning of 'premises' see PARA 27 note 12.

13 Licensing Act 2003 s 154(1).

14 For these purposes, 'weights and measures inspector' means an inspector of weights and measures appointed under the Weights and Measures Act 1985 s 72(1) (see **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 23): Licensing Act 2003 s 159.

15 Licensing Act 2003 s 154(2).

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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144. Allowing the sale of alcohol to children.

A person who works at relevant premises¹ in a capacity, whether paid or unpaid, which authorises him to prevent the sale of alcohol² to an individual aged under 18 commits an offence if he knowingly allows the sale of alcohol on those premises to such an individual³.

A person to whom heads (a) and (b) below apply commits an offence if he knowingly allows alcohol to be supplied on relevant premises by or on behalf of a club:

- 524 (1) to or to the order of a member of the club who is aged under 18; or
- 525 (2) to the order of a member of the club, to an individual who is aged under 18⁴.

The persons who may commit such an offence are:

- 526 (a) a person who works on the premises in a capacity, whether paid or unpaid, which authorises him to prevent the supply; and
- 527 (b) any member or officer of the club who at the time of the supply is present on the relevant premises in a capacity which enables him to prevent it⁵.

A person guilty of an offence under the above provisions is liable on summary conviction to a fine not exceeding level 5 on the standard scale⁶.

It is the duty of every local weights and measures authority⁷ in England and Wales to enforce within its area the above provisions, so far as they apply to sales of alcohol made on or from premises⁸ to which the public has access⁹. A weights and measures inspector¹⁰ may make, or authorise any person to make on his behalf, such purchases of goods as appear expedient for the purpose of determining whether those provisions are being complied with¹¹.

1 As to the meaning of 'relevant premises' see PARA 134 note 2.

2 As to the meaning of 'alcohol' see PARA 30.

3 Licensing Act 2003 s 147(1), (2).

4 Licensing Act 2003 s 147(3). As to supply to members or guests of a club see s 64; and PARA 86 at heads (a)-(c).

5 See the Licensing Act 2003 s 147(4).

6 Licensing Act 2003 s 147(5).

7 As to weights and measures authorities see **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 20.

8 As to the meaning of 'premises' see PARA 27 note 12.

9 Licensing Act 2003 s 154(1).

10 As to the meaning of 'weights and measures inspector' see PARA 143 note 14.

11 Licensing Act 2003 s 154(2).

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(iv) Children and Alcohol/A. OFFENCES UNDER THE LICENSING ACT 2003/145. Persistently selling alcohol to children.

145. Persistently selling alcohol to children.

A person is guilty of an offence if:

- 528 (1) on three or more different occasions within a period of three consecutive months alcohol¹ is unlawfully sold² on the same premises³ to an individual aged under 18;
- 529 (2) at the time of each sale the premises were either licensed premises⁴ or premises authorised to be used⁵ for a permitted temporary activity⁶; and
- 530 (3) that person was a responsible person⁷ in relation to the premises at each such time⁸.

The individual to whom the sales are made may, but need not be, the same in each case⁹.

The same sale may not be counted in respect of different offences for the purpose:

- 531 (a) of enabling the same person to be convicted of more than one offence under these provisions; or
- 532 (b) of enabling the same person to be convicted of both an offence under these provisions and an offence of selling, or allowing the sale, of alcohol to children under the provisions¹⁰ already discussed¹¹.

A person guilty of an offence under these provisions is liable on summary conviction to a fine not exceeding £10,000¹². In determining whether such an offence has been committed, the following are admissible as evidence that there has been an unlawful sale of alcohol to an individual aged under 18 on any premises on any occasion:

- 533 (i) the conviction of a person for an offence of selling alcohol to children¹³ in respect of a sale to that individual on those premises on that occasion;
- 534 (ii) the giving to a person of a caution¹⁴ in respect of such an offence; or
- 535 (iii) the payment by a person of a fixed penalty¹⁵ in respect of such a sale¹⁶.

Where the holder of a premises licence is convicted of an offence under these provisions in respect of sales on the premises to which the licence relates, the court may order that so much of the licence as authorises the sale by retail¹⁷ of alcohol on those premises is suspended for a period not exceeding three months¹⁸. Such an order comes into force at the time specified by the court that makes it¹⁹, but the magistrates' court which makes it may suspend its coming into force pending an appeal²⁰. Where more than one person is liable for an offence under the above provisions relating to the same sales, no more than one such suspension order may be made in relation to the premises in question in respect of convictions by reference to those sales²¹.

Where there is evidence that a person has committed an offence under the above provisions, and a senior police officer or a weights and measures inspector considers that there is a realistic prospect that the licence holder will be convicted of that offence, a closure order may be applied for in respect of the premises²².

1 As to the meaning of 'alcohol' see PARA 30.

2 For these purposes, alcohol sold to an individual aged under 18 is unlawfully sold to him if (1) the person making the sale believed the individual to be aged under 18; or (2) that person did not have reasonable grounds for believing the individual to be aged 18 or over: Licensing Act 2003 s 147A(2) (ss 147A, 147B added by the Violent Crime Reduction Act 2006 s 23(1)). A person has reasonable grounds for believing an individual to be aged 18 or over only if (a) he asked the individual for evidence of his age and that individual produced evidence that would have convinced a reasonable person; or (b) nobody could reasonably have suspected from the individual's appearance that he was aged under 18: Licensing Act 2003 s 147A(3) (as so added).

3 As to the meaning of 'premises' see PARA 27 note 12.

4 As to the meaning of 'licensed premises' see PARA 134 note 2.

5 Ie by virtue of the Licensing Act 2003 Pt 5 (ss 98-110): see PARA 108 et seq.

6 As to the meaning of 'permitted temporary activity' see PARA 108.

7 A person is, in relation to premises and a time, a responsible person for these purposes if, at that time, he is (1) the person or one of the persons holding a premises licence in respect of the premises; or (2) the person or one of the persons who is the premises user in respect of a temporary event notice by reference to which the premises are authorised to be used for a permitted temporary activity by virtue of the Licensing Act 2003 Pt 5: s 147A(4) (as added: see note 2). As to the meaning of 'premises licence' see PARA 53 note 1; as to the meaning of 'temporary event notice' see PARA 108; and as to the meaning of 'premises user' in respect of such a notice see PARA 108 note 19.

8 Licensing Act 2003 s 147A(1) (as added: see note 2).

9 Licensing Act 2003 s 147A(5) (as added: see note 2).

10 Ie under the Licensing Act 2003 ss 146, 147: see PARAS 143-144.

11 Licensing Act 2003 s 147A(6) (as added: see note 2).

12 Licensing Act 2003 s 147A(8) (as added: see note 2). The Secretary of State may by order amend s 147A(8) to increase the maximum fine for the time being specified therein: s 147A(9) (as so added).

13 Ie an offence under the Licensing Act 2003 s 146: see PARA 143.

14 Ie within the meaning of the Police Act 1997 Pt V (ss 112-127). 'Caution' means a caution given to a person in England and Wales or Northern Ireland in respect of an offence which, at the time when the caution is given, he has admitted: s 126(1).

15 Ie under the Criminal Justice and Police Act 2001 Pt 1 (ss 1-49): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 586 et seq.

16 Licensing Act 2003 s 147A(7) (as added: see note 2).

17 As to the meaning of 'sale by retail' see PARA 30.

18 Licensing Act 2003 s 147B(1) (as added: see note 2).

19 Licensing Act 2003 s 147B(3) (as added: see note 2). This is subject to s 147B(4), (5): s 147B(3) (as so added). Section 130 (powers of appellate court to suspend section 129 order: see PARA 129) applies (with the omission of s 130(9)) where an order under s 147B(1) is made on conviction of an offence under s 147A as it applies where an order under s 129 is made on conviction of a relevant offence in Pt 6 (ss 111-135): s 147B(5) (as so added).

20 Licensing Act 2003 s 147B(4) (as added: see note 2). See also note 19.

21 Licensing Act 2003 s 147B(2) (as added: see note 2).

22 See the Licensing Act 2003 ss 169A, 169B; and PARA 173.

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(iv) Children and Alcohol/A. OFFENCES UNDER THE LICENSING ACT 2003/146. Sale of liqueur confectionery to children under the age of 16.

146. Sale of liqueur confectionery to children under the age of 16.

A person commits an offence if he sells liqueur confectionery¹ to an individual aged under 16, or supplies such confectionery, on behalf of a club:

- 536 (1) to or to the order of a member of the club who is aged under 16; or
- 537 (2) to the order of a member of the club, to an individual who is aged under 16².

A club commits an offence if liqueur confectionery is supplied by it or on its behalf:

- 538 (a) to or to the order of a member of the club who is aged under 16; or
- 539 (b) to the order of a member of the club, to an individual who is aged under 16³.

A person guilty of any such offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale⁴.

Where a person is charged with an offence under the above provisions by reason of his own conduct it is a defence that he believed that the individual was aged 16 or over, and that either he had taken all reasonable steps to establish the individual's age⁵, or nobody could reasonably have suspected from the individual's appearance that he was aged under 16⁶. Where a person ('the accused') is charged with such an offence by reason of the act or default of some other person, it is a defence that the accused exercised all due diligence to avoid committing it⁷.

1 'Liqueur confectionery' means confectionery which (1) contains alcohol in a proportion not greater than 0.2 litres of alcohol (of a strength not exceeding 57%) per kilogram of the confectionery; and (2) either consists of separate pieces weighing not more than 42g or is designed to be broken into such pieces for the purpose of consumption: Licensing Act 2003 ss 148(7), 191(2). As to the meaning of 'alcohol' see PARA 30.

2 Licensing Act 2003 s 148(1).

3 Licensing Act 2003 s 148(2).

4 Licensing Act 2003 s 148(6). As to the standard scale see PARA 17 note 21.

5 For these purposes, a person is treated as having taken all reasonable steps to establish an individual's age if he asked the individual for evidence of his age, and the evidence would have convinced a reasonable person: Licensing Act 2003 s 148(4).

6 Licensing Act 2003 s 148(3).

7 Licensing Act 2003 s 148(5). As to the due diligence defence see PARA 143 note 10.

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(iv) Children and Alcohol/A. OFFENCES UNDER THE LICENSING ACT 2003/147. Purchase of alcohol by or on behalf of children.

147. Purchase of alcohol by or on behalf of children.

An individual aged under 18 commits an offence if he buys or attempts to buy alcohol¹, or, where he is a member of a club:

540 (1) alcohol is supplied to him or to his order by or on behalf of the club, as a result of some act or default of his; or

541 (2) he attempts to have alcohol supplied to him or to his order by or on behalf of the club².

A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale³. The above provisions do not, however, apply where the individual buys or attempts to buy the alcohol at the request of a constable⁴, or a weights and measures inspector⁵, who is acting in the course of his duty⁶.

A person commits an offence if:

542 (a) he buys or attempts to buy alcohol on behalf of an individual aged under 18; or

543 (b) where he is a member of a club, on behalf of an individual aged under 18 he either makes arrangements whereby alcohol is supplied to him or to his order by or on behalf of the club, or attempts to make such arrangements⁷.

A person ('the relevant person') commits an offence if:

544 (i) he buys or attempts to buy alcohol for consumption on relevant premises⁸ by an individual aged under 18; or

545 (ii) where he is a member of a club, by some act or default of his, alcohol is supplied to him, or to his order, by or on behalf of the club for consumption on relevant premises by an individual aged under 18, or he attempts to have alcohol so supplied for such consumption⁹;

but heads (i) and (ii) above do not apply where:

546 (A) the relevant person is aged 18 or over;

547 (B) the individual is aged 16 or 17;

548 (C) the alcohol is beer¹⁰, wine¹¹ or cider¹²;

549 (D) its purchase or supply is for consumption at a table meal¹³ on relevant premises; and

550 (E) the individual is accompanied at the meal by an individual aged 18 or over¹⁴.

A person guilty of an offence under head (a), head (b), head (i) or head (ii) above is liable on summary conviction to a fine not exceeding level 5 on the standard scale¹⁵. Where a person is charged with such an offence, it is a defence that he had no reason to suspect that the individual was aged under 18¹⁶.

- 1 As to the meaning of 'alcohol' see PARA 30.
- 2 Licensing Act 2003 s 149(1).
- 3 Licensing Act 2003 s 149(7)(a). As to the standard scale see PARA 17 note 21.
- 4 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.
- 5 As to the meaning of 'weights and measures inspector' see PARA 143 note 14. As to such an inspector's ability to authorise any person to make such purchases in order to determine whether the Licensing Act 2003 ss 146, 147 (sale or allowing the sale of alcohol to children: see PARAS 143-144) are being complied with, see s 154(2); and PARAS 143-144.
- 6 Licensing Act 2003 s 149(2).
- 7 Licensing Act 2003 s 149(3).
- 8 As to the meaning of 'relevant premises' see PARA 134 note 2.
- 9 Licensing Act 2003 s 149(4).
- 10 As to the meaning of 'beer' see PARA 30 note 3.
- 11 As to the meaning of 'wine' see PARA 30 note 2.
- 12 As to the meaning of 'cider' see PARA 30 note 4.
- 13 'Table meal' means a meal eaten by a person seated at a table, or at a counter or other structure which serves the purpose of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure serving the purpose of a table: Licensing Act 2003 s 159.
- 14 Licensing Act 2003 s 149(5). This provision substantially re-enacts the exemption in the Licensing Act 1964 s 169D (repealed).
- 15 Licensing Act 2003 s 149(7)(b).
- 16 Licensing Act 2003 s 149(6).

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(iv) Children and Alcohol/A. OFFENCES UNDER THE LICENSING ACT 2003/148. Consumption of alcohol by children.

148. Consumption of alcohol by children.

An individual aged under 18 commits an offence if he knowingly consumes alcohol¹ on relevant premises². A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale³.

A person to whom heads (1) and (2) apply commits an offence if he knowingly allows the consumption of alcohol on relevant premises by an individual aged under 18⁴. The persons who may commit that offence are:

- 551 (1) a person who works at the premises in a capacity, whether paid or unpaid, which authorises him to prevent the consumption; and
- 552 (2) where the alcohol was supplied by a club to or to the order of a member of the club, any member or officer of the club who is present at the premises at the time of the consumption in a capacity which enables him to prevent it⁵.

A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale⁶.

The above provisions do not apply where:

- 553 (a) the individual is aged 16 or 17;
- 554 (b) the alcohol is beer⁷, wine⁸ or cider⁹;
- 555 (c) its consumption is at a table meal¹⁰ on relevant premises; and
- 556 (d) the individual is accompanied at the meal by an individual aged 18 or over¹¹.

1 As to the meaning of 'alcohol' see PARA 30.

2 Licensing Act 2003 s 150(1). As to the meaning of 'relevant premises' see PARA 134 note 2.

3 Licensing Act 2003 s 150(5)(a). As to the standard scale see PARA 17 note 21.

4 Licensing Act 2003 s 150(2).

5 See the Licensing Act 2003 s 150(3).

6 Licensing Act 2003 s 150(5)(b).

7 As to the meaning of 'beer' see PARA 30 note 3.

8 As to the meaning of 'wine' see PARA 30 note 2.

9 As to the meaning of 'cider' see PARA 30 note 4.

10 As to the meaning of 'table meal' see PARA 147 note 13.

11 Licensing Act 2003 s 150(4).

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(iv) Children and Alcohol/A. OFFENCES UNDER THE LICENSING ACT 2003/149. Delivering alcohol to children.

149. Delivering alcohol to children.

A person who works on relevant premises¹ in any capacity, whether paid or unpaid, commits an offence if he knowingly delivers to an individual aged under 18 alcohol² sold on the premises, or alcohol supplied on the premises by or on behalf of a club to or to the order of a member of the club³.

A person who works on relevant premises in a capacity, whether paid or unpaid, which authorises him to prevent the delivery of alcohol to an individual aged under 18 commits an offence if he knowingly allows anybody else to deliver to such an individual alcohol sold on the premises⁴.

A person to whom heads (1) and (2) below apply commits an offence if he knowingly allows anybody else to deliver to an individual aged under 18 alcohol supplied on relevant premises by or on behalf of a club to or to the order of a member of the club⁵. The persons who may commit this offence are:

557 (1) a person who works on the premises in a capacity, whether paid or unpaid, which authorises him to prevent the supply; and

558 (2) any member or officer of the club who at the time of the supply in question is present on the premises in a capacity which enables him to prevent the supply⁶.

A person guilty of an offence under the above provisions is liable on summary conviction to a fine not exceeding level 5 on the standard scale⁷. The above provisions do not, however, apply where:

559 (a) the alcohol is delivered at a place where the buyer or, as the case may be, the person supplied lives or works; or

560 (b) the individual aged under 18 works on the relevant premises in a capacity, whether paid or unpaid, which involves the delivery of alcohol; or

561 (c) the alcohol is sold or supplied for consumption on the relevant premises⁸.

1 As to the meaning of 'relevant premises' see PARA 134 note 2.

2 As to the meaning of 'alcohol' see PARA 30.

3 Licensing Act 2003 s 151(1).

4 See the Licensing Act 2003 s 151(2), (3).

5 Licensing Act 2003 s 151(4).

6 Licensing Act 2003 s 151(5).

7 Licensing Act 2003 s 151(7). As to the standard scale see PARA 17 note 21.

8 Licensing Act 2003 s 151(6).

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(iv) Children and Alcohol/A. OFFENCES UNDER THE LICENSING ACT 2003/150. Sending a child to obtain alcohol.

150. Sending a child to obtain alcohol.

A person commits an offence if he knowingly sends an individual aged under 18 to obtain alcohol¹ sold or to be sold on relevant premises² for consumption off the premises, or alcohol supplied or to be supplied by or on behalf of a club to or to the order of a member of the club for such consumption³. It is immaterial for these purposes whether the individual aged under 18 is sent to obtain the alcohol from the relevant premises or from other premises⁴ from which it is delivered in pursuance of the sale or supply⁵. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale⁶.

The above provisions do not, however, apply:

- 562 (1) where the individual aged under 18 works on the relevant premises in a capacity, whether paid or unpaid, which involves the delivery of alcohol⁷;
- 563 (2) where the individual aged under 18 is sent by a constable⁸, or a weights and measures inspector⁹, who is acting in the course of his duty¹⁰.

1 As to the meaning of 'alcohol' see PARA 30.

2 As to the meaning of 'relevant premises' see PARA 134 note 2.

3 Licensing Act 2003 s 152(1). Section 152 re-enacts the Licensing Act 1964 s 169G (repealed).

4 As to the meaning of 'premises' see PARA 27 note 12.

5 Licensing Act 2003 s 152(2).

6 Licensing Act 2003 s 152(5). As to the standard scale see PARA 17 note 21.

7 Licensing Act 2003 s 152(3).

8 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

9 As to the meaning of 'weights and measures inspector' see PARA 143 note 14. As to such an inspector's ability to send a person to make test purchases in order to determine whether the Licensing Act 2003 ss 146, 147 (sale or allowing the sale of alcohol to children: see PARAS 143-144) are being complied with, see s 154(2); and PARAS 143-144.

10 Licensing Act 2003 s 152(4).

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(iv) Children and Alcohol/A. OFFENCES UNDER THE LICENSING ACT 2003/151. Prohibition of unsupervised sales by children.

151. Prohibition of unsupervised sales by children.

A responsible person¹ commits an offence if on any relevant premises² he knowingly allows an individual aged under 18 to make on the premises any sale of alcohol³, or any supply of alcohol by or on behalf of a club to or to the order of a member of the club, unless the sale or supply has been specifically approved by that or another responsible person⁴. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale⁵.

The above prohibition does not, however, apply where:

- 564 (1) the alcohol is sold or supplied for consumption with a table meal⁶;
- 565 (2) it is sold or supplied in premises which are being used for the service of table meals, or in a part of any premises which is being so used; and
- 566 (3) the premises are, or the part is, not used for the sale or supply of alcohol otherwise than to persons having table meals there and for consumption by such a person as an ancillary to his meal⁷.

1 For these purposes, 'responsible person' means (1) in relation to licensed premises: (a) the holder of a premises licence in respect of the premises; (b) the designated premises supervisor (if any) under such a licence; or (c) any individual aged 18 or over who is authorised for these purposes by such a holder or supervisor; (2) in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables him to prevent the supply in question; and (3) in relation to premises which may be used for a permitted temporary activity by virtue of the Licensing Act 2003 Pt 5 (ss 98-110) (see PARA 108 et seq): (a) the premises user; or (b) any individual aged 18 or over who is authorised for these purposes by the premises user: s 153(4). As to the meaning of 'licensed premises' see PARA 134 note 2; as to the meaning of 'premises licence' see PARA 53 note 1; as to the meaning of 'designated premises supervisor' see PARA 55 note 4; as to the meaning of 'club premises certificate' see PARA 85; as to the meaning of 'permitted temporary activity' see PARA 108; as to the meaning of 'premises user' see PARA 108 note 19; and as to the meaning of 'premises' see PARA 27 note 12.

2 As to the meaning of 'relevant premises' see PARA 134 note 2.

3 As to the meaning of 'alcohol' see PARA 30.

4 Licensing Act 2003 s 153(1). As to supply to members or guests of a club see s 64; and PARA 86 at heads (a)-(c).

Section 153 substantially re-enacts the Licensing Act 1964 s 171A (repealed).

5 Licensing Act 2003 s 153(3). As to the standard scale see PARA 17 note 21.

6 As to the meaning of 'table meal' see PARA 147 note 13.

7 Licensing Act 2003 s 153(2).

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(iv) Children and Alcohol/B. OTHER OFFENCES/152. Giving alcohol to children under the age of five.

B. OTHER OFFENCES

152. Giving alcohol to children under the age of five.

If any person gives, or causes to be given, to any child under the age of five years any alcohol¹, except upon the order of a duly qualified medical practitioner, or in case of sickness, apprehended sickness or other urgent cause, he is liable on summary conviction to a fine not exceeding level 1 on the standard scale².

¹ le any alcohol within the meaning given by the Licensing Act 2003 s 191 (see PARA 30) but disregarding s 191(1)(f)-(i) (see PARA 30 at heads (6)-(9)).

² Children and Young Persons Act 1933 s 5 (amended by the Criminal Justice Act 1982 ss 38, 46; the Licensing Act 2003 Sch 6 paras 12, 13). As to the standard scale see PARA 17 note 21.

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(iv) Children and Alcohol/B. OTHER OFFENCES/153. Confiscation of alcohol from young persons.

153. Confiscation of alcohol from young persons.

Where a constable¹ reasonably suspects that a person in a relevant place² is in possession of alcohol³ and that either:

- 567 (1) he is under the age of 18; or
- 568 (2) he intends that any of the alcohol should be consumed by a person under the age of 18 in that or any other relevant place; or
- 569 (3) a person under the age of 18 who is, or has recently been, with him has recently consumed alcohol in that or any other relevant place,

the constable may require him to surrender anything in his possession which is, or which the constable reasonably believes to be, alcohol or a container for alcohol and to state his name and address⁴. A constable may not, however, under these powers require a person to surrender any sealed container unless the constable reasonably believes that the person is, or has been, consuming, or intends to consume, alcohol in any relevant place⁵.

A person who fails without reasonable excuse to comply with such a requirement commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale⁶. A constable who imposes such a requirement on a person must inform him of his suspicion, and that failing without reasonable excuse to comply with such a requirement is an offence⁷.

1 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq. A constable's powers under the Confiscation of Alcohol (Young Persons) Act 1997 s 1 (see the text and notes 2-7) may now also be exercised by a community support officer (see the Police Reform Act 2002 ss 38(6) 38A, Sch 4 para 6 (s 38A added by the Police and Justice Act 2006 s 7(2)); the Police Reform Act 2002 (Standard Powers and Duties of Community Support Officers) Order 2007, SI 2007/3202, art 2, Schedule para (f) or by persons accredited for the purposes of a community safety accreditation scheme (see the Police Reform Act 2002 Sch 5 para 5). As to community safety accreditation schemes generally see **POLICE** vol 36(1) (2007 Reissue) PARA 532 et seq.

2 For the purposes of the Confiscation of Alcohol (Young Persons) Act 1997 s 1(1), (1A), 'relevant place', in relation to a person, means: (1) any public place, other than licensed premises; or (2) any place, other than a public place, to which the person has unlawfully gained access, and for this purpose a place is a public place if at the material time the public or any section of the public has access to it, on payment or otherwise, as of right or by virtue of express or implied permission: s 1(6) (amended by the Licensing Act 2003 s 155(1)(c)). For these purposes, 'licensed premises', in relation to England and Wales, means premises which may by virtue of the Licensing Act 2003 Pt 3 (ss 11-59) (premises licences: see PARA 53 et seq) or Pt 5 (ss 98-110) (permitted temporary activity: see PARA 108 et seq) be used for the supply of alcohol within the meaning of s 14 (see PARA 53 note 18): Confiscation of Alcohol (Young Persons) Act 1997 s 1(7) (substituted by the Licensing Act 2003 Sch 6 paras 115(1), (3)).

3 As to the meaning of 'alcohol' see PARA 30 (definition applied by the Confiscation of Alcohol (Young Persons) Act 1997 s 1(7) (as substituted: see note 2)).

4 Confiscation of Alcohol (Young Persons) Act 1997 s 1(1) (amended by the Criminal Justice and Police Act 2001 s 29; the Licensing Act 2003 Sch 6 para 115(1), (2)(c), Sch 7). A constable may dispose of anything surrendered to him under the Confiscation of Alcohol (Young Persons) Act 1997 s 1(1) in such manner as he considers appropriate: Confiscation of Alcohol (Young Persons) Act 1997 s 1(2).

5 Confiscation of Alcohol (Young Persons) Act 1997 s 1(1A) (added by the Licensing Act 2003 s 155(1)(b)).

- 6 Confiscation of Alcohol (Young Persons) Act 1997 s 1(3). As to the standard scale see PARA 17 note 21.
- 7 Confiscation of Alcohol (Young Persons) Act 1997 s 1(4).

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(v) Sale of Alcohol on Moving Vehicles and Trains

154. Sale of alcohol on moving vehicles.

A person commits an offence if he sells by retail alcohol¹ on or from a vehicle² at a time when the vehicle is not permanently or temporarily parked³. A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000, or to both⁴.

In proceedings against a person for such an offence, it is a defence that his act was due to a mistake, or to reliance on information given to him, or to an act or omission by another person, or to some other cause beyond his control, and that he took all reasonable precautions and exercised all due diligence to avoid committing the offence⁵.

1 As to the meanings of 'sale by retail' and 'alcohol' see PARA 30.

2 As to the meaning of 'vehicle' see PARA 27 note 14.

3 Licensing Act 2003 s 156(1).

4 Licensing Act 2003 s 156(2).

5 Licensing Act 2003 s 156(3).

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(v) Sale of Alcohol on Moving Vehicles and Trains/155. Power to prohibit sale of alcohol on trains.

155. Power to prohibit sale of alcohol on trains.

A magistrates' court acting for the local justice area may make an order prohibiting the sale of alcohol¹, during such period as may be specified in the order, on any railway vehicle²:

- 570 (1) at such station³ or stations as may be specified, being stations in that area; or
- 571 (2) travelling between such stations as may be specified, at least one of which is in that area⁴.

A magistrates' court may make such an order only on the application of a senior police officer⁵ and may not make such an order unless it is satisfied that the order is necessary to prevent disorder⁶.

Where such an order is made, the responsible senior police officer⁷ must, forthwith, serve a copy of the order on the train operator⁸, or each train operator, affected by the order⁹.

A person commits an offence if he knowingly sells or attempts to sell alcohol in contravention of such an order, or allows the sale of alcohol in contravention of such an order¹⁰. A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000, or to both¹¹.

1 As to the meaning of 'alcohol' see PARA 30.

2 'Railway vehicle' includes anything which, whether or not it is constructed or adapted to carry any person or load, is constructed or adapted to run on flanged wheels over or along track: see the Railways Act 1993 s 83 (definition applied by the Licensing Act 2003 s 157(7)); and PARA 28 note 7.

3 'Station' means any land or other property which consists of premises used as, or for the purposes of, or otherwise in connection with, a railway passenger station or railway passenger terminal (including any approaches, forecourt, cycle store or car park), whether or not the land or other property is, or the premises are, also used for other purposes: see the Railways Act 1993 s 83 (definition applied by the Licensing Act 2003 s 157(7)).

4 Licensing Act 2003 s 157(1), (7) (s 151(1) amended by SI 2005/886).

5 Licensing Act 2003 s 157(2). 'Senior police officer' means a police officer of, or above, the rank of inspector: s 157(7).

6 Licensing Act 2003 s 157(3).

7 'Responsible senior police officer', in relation to an order under the Licensing Act 2003 s 157, means the senior police officer who applied for the order or, if the chief officer of police of the force in question has designated another senior police officer for the purpose, that other officer: s 157(7).

8 For these purposes, 'train operator' means a person authorised by a licence under the Railways Act 1993 s 8 (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 83) to operate railway assets (within the meaning of s 6: see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 83): Licensing Act 2003 s 157(7).

9 Licensing Act 2003 s 157(4). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.

10 Licensing Act 2003 s 157(5).

11 Licensing Act 2003 s 157(6).

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(vi) Making False Statements

156. False statements made for the purposes of the Licensing Act 2003.

A person commits an offence if he knowingly or recklessly makes a false statement¹ in or in connection with:

- 572 (1) an application for the grant, variation, transfer or review of a premises licence² or club premises certificate³;
- 573 (2) an application for a provisional statement⁴;
- 574 (3) a temporary event notice⁵, an interim authority notice⁶ or any other notice under the Licensing Act 2003⁷;
- 575 (4) an application for the grant or renewal of a personal licence⁸; or
- 576 (5) a notice⁹ by a freeholder conferring the right to be notified of changes to the licensing register¹⁰.

A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale¹¹.

1 For these purposes, a person is to be treated as making a false statement if he produces, furnishes, signs or otherwise makes use of a document that contains a false statement: Licensing Act 2003 s 158(2).

2 As to applications with regard to a premises licence see PARA 53 et seq; and as to the meaning of 'premises certificate' see PARA 53 note 1.

3 As to applications with regard to club premises certificates see PARA 86 et seq; and as to the meaning of 'club premises certificate' see PARA 85.

4 As to applications for provisional statements see PARA 63.

5 As to temporary event notices see PARA 108 et seq.

6 As to interim authority notices see PARA 76.

7 As to notices under the Licensing Act 2003 see generally s 184; and PARA 39 text and notes 11-14.

8 As to applications with regard to personal licences see PARA 115 et seq; and as to the meaning of 'personal licence' see PARA 114.

9 Is a notice within the Licensing Act 2003 s 178(1): see PARA 39.

10 Licensing Act 2003 s 158(1). As to the register see PARA 37.

11 Licensing Act 2003 s 158(3). As to the standard scale see PARA 17 note 21.

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(vii) General Provisions about Offences etc/157. Right of entry to investigate offences under the Licensing Act 2003.

(vii) General Provisions about Offences etc

157. Right of entry to investigate offences under the Licensing Act 2003.

A constable¹ may enter and search any premises² in respect of which he has reason to believe that an offence under the Licensing Act 2003 has been, is being or is about to be committed³. A constable exercising a power so conferred may, if necessary, use reasonable force⁴.

1 As to the office of constable generally see **POLICE** vol 36(1) (Reissue) PARA 201 et seq. A community support officer may also enter and search premises other than clubs in the relevant police area, but only in respect of a relevant licensing offence: see the Police Reform Act 2002 Sch 4 para 8A(1) (Sch 4 para 8A added by the Serious Organised Crime and Police Act 2005 Sch 8 Pt 1 paras 1, 9). He may not, however, enter premises in the exercise of that power other than premises in respect of which he reasonably believes that a premises licence under the Licensing Act 2003 Pt 3 (ss 11-59) (see PARA 53 et seq) authorises the sale of alcohol for consumption off the premises, except in the company, and under the supervision, of a constable: Police Reform Act 2002 Sch 4 para 8A(2), (3) (as so added). 'Relevant licensing offence' means an offence under any of the following provisions of the Licensing Act 2003: (1) s 141 (otherwise than by virtue of s 141(2)(c) or (3)) (see PARA 136); (2) s 142 (see PARA 137); (3) s 146(1) (see PARA 143); s 149(1)(a), (3)(a) or (4)(a) (see PARA 147); (5) s 150(1) (see PARA 148); (6) s 150(2) (otherwise than by virtue of s 150(3)(b) (see PARA 148)); (7) s 152(1) (excluding s 152(1)(b) (see PARA 150)); Police Reform Act 2002 Sch 4 para 2(6A) (added by the Serious Organised Crime and Police Act 2005 Sch 8 Pt 1 paras 1, 3(1), (8); applied by the Police Reform Act 2002 Sch 4 para 8A(1)). As to community support officers see further **POLICE** vol 36(1) (2007 Reissue) PARA 532 et seq.

2 As to the meaning of 'premises' see PARA 27 note 12.

3 Licensing Act 2003 s 180(1).

4 Licensing Act 2003 s 180(2).

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(vii) General Provisions about Offences etc/158. Proceedings for offences under the Licensing Act 2003.

158. Proceedings for offences under the Licensing Act 2003.

Proceedings for an offence under the Licensing Act 2003 may be instituted by a licensing authority¹, except in the case of an offence² of persistently selling alcohol³ to children⁴. They may also be instituted by the Director of Public Prosecutions⁵ or, in the case of certain offences involving the sale or persistent sale of alcohol to children⁶, by a local weights and measures authority⁷.

The limitation period for bringing summary proceedings in relation to any such offence is 12 months⁸. Proceedings for an offence under the 2003 Act may be taken against a body corporate or unincorporated association at any place at which it has a place of business, and against an individual at any place where he is for the time being⁹; but this does not affect any jurisdiction which is otherwise exercisable¹⁰. Proceedings for an offence alleged to have been committed by an unincorporated association must be brought in the name of the association and not in that of any of its members¹¹ and rules of court relating to the service of documents are to have effect as if the association were a body corporate¹².

1 As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

2 Is an offence under the Licensing Act 2003 s 147A: see PARA 145.

3 As to the meaning of 'alcohol' see PARA 30.

4 Licensing Act 2003 s 186(1), (2)(a) (amended by the Violent Crime Reduction Act 2006 s 23(2)(a)).

5 Licensing Act 2003 s 186(2)(b). As to the Director of Public Prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

6 Is in the case of an offence under the Licensing Act 2003 s 146, s 147 or s 147A: see PARAS 143-145.

7 Licensing Act 2003 s 186(2)(c) (amended by the Violent Crime Reduction Act 2006 s 23(2)(b)). The reference to a local weights and measures authority is to a local weights and measures authority within the meaning of the Weights and Measures Act 1985 s 69 (see **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 20): see the Licensing Act 2003 s 186(2)(c).

8 See the Licensing Act 2003 s 186(3), which provides that the Magistrates' Courts Act 1980 s 127(1) (information to be laid within six months of offence: see **MAGISTRATES** vol 29(2) (Reissue) PARA 589) is to have effect in relation to any offence under the Licensing Act 2003 as if for the reference to six months there were substituted a reference to 12 months.

9 Licensing Act 2003 s 188(5), (7). As to offences by bodies corporate etc see further PARA 159.

10 Licensing Act 2003 s 188(6).

11 Licensing Act 2003 s 188(2). In proceedings for an offence brought against an unincorporated association, the Criminal Justice Act 1925 s 33 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1161) and the Magistrates' Courts Act 1980 Sch 3 (procedure: see **MAGISTRATES** vol 29(2) (Reissue) PARA 666) apply as they do in relation to a body corporate: Licensing Act 2003 s 188(4).

12 Licensing Act 2003 s 188(3).

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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159. Offences by bodies corporate, partnerships or unincorporated associations.

If an offence under the Licensing Act 2003 committed by a body corporate is shown to have been committed with the consent or connivance of an officer¹, or to be attributable to any neglect on his part, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly². If the affairs of a body corporate are managed by its members, the above provision applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body³.

If such an offence committed by a partnership is shown to have been committed with the consent or connivance of a partner⁴, or to be attributable to any neglect on his part, the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly⁵.

If such an offence committed by an unincorporated association other than a partnership is shown to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or to be attributable to any neglect on the part of such an officer or member, that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly⁶.

Regulations made by the Secretary of State⁷ may provide for the application of any of the above provisions, with such modifications as the Secretary of State considers appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside the United Kingdom⁸.

A fine imposed on an unincorporated association on its conviction for an offence under the 2003 Act is to be paid out of the funds of the association⁹.

1 For these purposes, 'officer', in relation to a body corporate, means (1) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity; or (2) an individual who is a controller of the body: Licensing Act 2003 s 187(3).

2 Licensing Act 2003 s 187(1), (8).

3 Licensing Act 2003 s 187(2).

4 For these purposes, 'partner' includes a person purporting to act as a partner: Licensing Act 2003 s 187(5).

5 Licensing Act 2003 s 187(4).

6 Licensing Act 2003 s 187(6).

7 As to the Secretary of State see PARA 2.

8 Licensing Act 2003 ss 187(7), 193. At the date at which this volume states the law, no such regulations had been made. As to the meaning of 'United Kingdom' see PARA 16 note 8.

9 Licensing Act 2003 s 188(1), (7).

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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160. Unlicensed person selling on licensed premises.

If a person who is neither the holder of a licence under the Licensing Act 2003, nor his agent or employee, sells in licensed premises alcohol which is his own and which he is selling for his own benefit, he makes an unauthorised sale, notwithstanding the fact that there is an existing licence holder living on the licensed premises, and in such circumstances the licensee may be convicted of aiding and abetting the sale¹. However, if the licence holder is the agent of the person whose alcohol he sells, the owner of the alcohol cannot be convicted of making an unauthorised sale although the sale is a sale by the owner².

1 *Peckover v Defries* (1906) 95 LT 883, DC; followed in *Dunning v Owen* [1907] 2 KB 237, DC. As to the unauthorised sale of alcohol see PARAS 132-133.

2 *Mellor v Lydiate* [1914] 3 KB 1141.

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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161. Aiding and abetting.

A person who aids and abets¹ the sale by another person of alcohol without a licence may be convicted² either of the offence of making an unauthorised sale³ or of aiding and abetting another in making such a sale⁴.

1 Aiding and abetting requires not only knowledge but some form of encouragement, which may take the form of passive assistance by a person who makes no attempt to exercise his right to prevent the offence: see *Tuck v Robson* [1970] 1 All ER 1171, [1970] 1 WLR 741, DC. See also *DPP v Rogers* (1991) 155 JP 891, [1992] Crim LR 51 (brewery area manager not aiding and abetting sale of intoxicating liquor without a licence by appointing a relief manager without applying for a protection order while the licence holder was suspended from employment). As to aiding and abetting see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 49 et seq.

2 *Cook v Stockwell* (1915) 84 LJB 2187, DC (resale by private customers with connivance of brewer).

3 As to the unauthorised sale of alcohol see PARAS 132-133.

4 See generally **MAGISTRATES** vol 29(2) (Reissue) PARA 525. See also *Benford v Sims* [1898] 2 QB 641, DC (person counselling commission of offence punishable summarily may be proceeded against as a principal).

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26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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162. Unauthorised sale by employee.

Unauthorised sales of alcohol¹ by an employee render the employer liable even if against the employer's orders, provided that the employee is acting within the scope of his employment².

If an employee of a licensed person makes a sale of alcohol away from the licensed premises, which is outside the scope of his authority and against the licensee's express instructions, the licensee cannot be convicted of making an unauthorised sale³.

If a licence holder's employee, when off the licensed premises, sells for cash some alcohol for which no order has been received at the licensed premises, the money so received being accounted for to the licensee, and if the employee is acting outside the scope of his authority in making the sale, the employee has made an unauthorised sale, and if the facts are such that the licensee must be taken to have known that the employee took with him, on a round of sales, alcohol which was not required for the execution of orders received, the licensee may be convicted of aiding and abetting the employee⁴.

1 As to the unauthorised sale of alcohol see PARAS 132-133.

2 See *Anderton v Rodgers* (1981) 145 JP 181, [1981] Crim LR 404, DC, where it was held that the Licensing Act 1964 s 160(1) (repealed) (sale without justices' licence under the previous legislation) was an absolute offence and once it was admitted that the bar staff were the committee's servants, the committee members were ipso facto guilty; the fact that a servant contravened specific instructions in committing the offence was no defence for those who gave the instructions. *Anderton v Rodgers* distinguished *Newman v Jones* (1886) 17 QBD 132, DC, as being a decision whether trustees of club property were liable where a club steward sold to non-members against the orders of the trustees and managing committee.

3 *Boyle v Smith* [1906] 1 KB 432, DC.

4 *Stansfeld & Co Ltd v Andrews* (1909) 25 TLR 259, DC.

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(vii) General Provisions about Offences etc/163. Sale by agent.

163. Sale by agent.

If an employee who does not hold a licence under the Licensing Act 2003 innocently sells alcohol which is his employer's property, upon his employer's instructions, although the employer does not hold a licence, the employee cannot be convicted of making an unauthorised sale¹.

An unlicensed principal is liable to be convicted in respect of sales of alcohol by his employee².

Facts may appear from which it can be concluded that alcohol is sold by an agent away from licensed premises with the consent and for the benefit of the licence holder. If so, the licence holder may be convicted of making an unauthorised sale of alcohol at the place where the agent sold it³.

1 *Williamson v Norris* [1899] 1 QB 7, DC (employee of the House of Commons sold liquor within the precincts of that House). As to the unauthorised sale of alcohol see PARAS 132-133.

2 *Jones v Hartley* (1918) 88 LJB 271, DC.

3 *Seager v White* (1884) 51 LT 261, DC (husband and wife).

UPDATE

26-163 Outline of the legislation ... Sale by agent

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(vii) General Provisions about Offences etc/164. Sale to an agent.

164. Sale to an agent.

Provided that a bona fide relationship of principal and agent exists, alcohol purchased on licensed premises by an agent belongs to his principal, and the handing over to the principal on unlicensed premises in exchange for the purchase price does not constitute a sale by the agent¹.

¹ *Jones v Mighall, Nelson v Mighall* (1932) 96 JP 395, DC, following *Pasquier v Neale* [1902] 2 KB 287, DC. As to the relationship of principal and agent see generally **AGENCY** vol 1 (2008) PARA 71 et seq.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(vii) General Provisions about Offences etc/165. Effect of temporary absence of licence holder.

165. Effect of temporary absence of licence holder.

A person holding a premises licence, by leaving the premises for some months during the currency of his licence, not intending to return, but subsequently doing so and attempting without success to transfer the licence to another person, does not cease to be the holder of the licence¹.

1 *Lawrence v O'Hara* (1903) 67 JP 369, DC.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(vii) General Provisions about Offences etc/166. Incoming tenant unlicensed.

166. Incoming tenant unlicensed.

It is an offence for an incoming tenant of a public-house to carry on the business of the house without a licence, even if the outgoing tenant remains the nominal licence holder¹.

¹ *MacFisheries Ltd v Harrison* (1924) 93 LJKB 811 at 812-813. See, however, *DPP v Rogers* (1991) 155 JP 891, [1992] Crim LR 51, where a licensee's employment was suspended pending an employment appeal, and it was held that a properly appointed relief manager might continue sales of alcohol under an implied delegation of the licensee's authority.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(6) OFFENCES/(vii) General Provisions about Offences etc/167. Void licence.

167. Void licence.

A void licence is of no effect, so that a licence granted after the statutory provision giving power to grant it had been repealed would be no defence to a charge of making an unauthorised sale of alcohol¹.

However, if a licence is good on the face of it, evidence of fraud in the way in which it was obtained is not admissible, unless it is evidence to charge the licence holder personally with having fraudulently obtained the licence, and if the licence holder acts under it in good faith he cannot be convicted².

A licence purporting to be granted otherwise than in accordance with the statutory procedure is void, and is therefore no defence to a charge of making an unauthorised sale of alcohol³. A licence renewed to a person who has died is also void⁴.

1 *Pearson v Broadbent* (1871) 36 JP 485. As to the unauthorised sale of alcohol see PARAS 132-133.

2 *R v Minshull* (1833) 1 Nev & MKB 277.

3 *R v Downs* (1790) 3 Term Rep 560.

4 *Cowles v Gale* (1871) 7 Ch App 12, CA.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(7) CLOSURE OF PREMISES/(i) Closure under the Licensing Act 2003/A. CLOSURE OF PREMISES IN AN IDENTIFIED AREA/168. Orders to close premises in an identified area.

(7) CLOSURE OF PREMISES

(i) Closure under the Licensing Act 2003

A. CLOSURE OF PREMISES IN AN IDENTIFIED AREA

168. Orders to close premises in an identified area.

Where there is or is expected to be disorder in any local justice area, a magistrates' court acting in the area may make an order requiring all premises¹:

- 577 (1) which are situated at or near the place of the disorder or expected disorder; and
- 578 (2) in respect of which a premises licence² or a temporary event notice³ has effect,

to be closed for a period, not exceeding 24 hours, specified in the order⁴. A magistrates' court may make such an order only on the application of a police officer who is of the rank of superintendent or above⁵ and may not make such an order unless it is satisfied that it is necessary to prevent disorder⁶.

Where such an order is made, a person to whom heads (a) to (c) below apply commits an offence if he knowingly keeps any premises to which the order relates open⁷, or allows any such premises to be kept open, during the period of the order⁸. The persons who may commit such an offence are:

- 579 (a) any manager of the premises;
- 580 (b) in the case of licensed premises⁹, the holder of a premises licence in respect of the premises, and the designated premises supervisor, if any, under such a licence; and
- 581 (c) in the case of premises in respect of which a temporary event notice has effect, the premises user in relation to that notice¹⁰.

A constable¹¹ may use such force as may be necessary for the purpose of closing premises ordered to be closed under the above provisions¹².

1 As to the meaning of 'premises' see PARA 27 note 12.

2 As to the meaning of 'premises licence' see PARA 53 note 1.

3 As to the meaning of 'temporary event notice' see PARA 108. A temporary event notice has effect from the time it is given in accordance with the Licensing Act 2003 Pt 5 (ss 98-110) until: (1) the time it is withdrawn; (2) the time a counter-notice is given under Pt 5; or (3) the expiry of the event period specified in the temporary event notice, whichever first occurs: s 171(1), (6).

4 Licensing Act 2003 s 160(1) (amended by SI 2005/886).

5 Licensing Act 2003 s 160(2).

6 Licensing Act 2003 s 160(3).

7 For the purposes of the Licensing Act 2003 Pt 8 (ss 160-171), relevant premises are open if a person who is not within s 171(4) enters the premises and (1) he buys or is otherwise supplied with food, drink or anything usually sold on the premises; or (2) while he is on the premises, they are used for the provision of regulated entertainment: s 171(1), (2). A person is within s 171(4) if he is: (a) an appropriate person in relation to the premises; (b) a person who usually lives at the premises; or (c) a member of the family of a person within head (a) or head (b) above: s 171(4). As to the meaning of 'relevant premises' see PARA 169 note 3; and as to the provision of regulated entertainment see PARA 31. 'Appropriate person', in relation to any relevant premises, means: (i) any person who holds a premises licence in respect of the premises; (ii) any designated premises supervisor under such a licence; (iii) the premises user in relation to any temporary event notice which has effect in respect of the premises; or (iv) a manager of the premises: s 171(5). As to the meanings of 'designated premises supervisor' and 'premises user' see PARAS 55 note 4, 108 note 19. 'Manager', in relation to any premises, means a person who works at the premises in a capacity, whether paid or unpaid, which authorises him to close them: s 171(5).

In determining, however, whether relevant premises are open, the following are to be disregarded: (A) where no premises licence has effect in respect of the premises, any use of the premises for activities (other than licensable activities) which do not take place during an event period specified in a temporary event notice having effect in respect of the premises; (B) any use of the premises for a qualifying club activity under and in accordance with a club premises certificate; and (C) any supply exempted under Sch 2 para 3 (certain supplies of hot food and drink by clubs, hotels etc not a licensable activity: see PARA 32) in circumstances where a person will neither be admitted to the premises, nor be supplied as mentioned in Sch 2 para 3(1)(b), except by virtue of being a member of a recognised club or a guest of such a member: s 171(3). As to licensable activities generally see PARA 28; and as to the meaning of 'club premises certificate' see PARA 85.

8 Licensing Act 2003 s 160(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 160(6). As to the standard scale see PARA 17 note 21.

9 As to the meaning of 'licensed premises' see PARA 134 note 2.

10 Licensing Act 2003 s 160(5).

11 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

12 Licensing Act 2003 s 160(6).

UPDATE

168-182 Closure of Premises

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

168-181 Closure under the Licensing Act 2003 ... Closure of premises for the unauthorised sale of alcohol

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(7) CLOSURE OF PREMISES/(i) Closure under the Licensing Act 2003/B. CLOSURE OF IDENTIFIED PREMISES/169. Closure orders for identified premises; extension of closure order.

B. CLOSURE OF IDENTIFIED PREMISES

169. Closure orders for identified premises; extension of closure order.

A senior police officer¹ may make a closure order² in relation to any relevant premises³ if he reasonably believes that:

- 582 (1) there is, or is likely imminently to be, disorder on, or in the vicinity of and related to, the premises and their closure is necessary in the interests of public safety; or
- 583 (2) a public nuisance is being caused by noise coming from the premises and the closure of the premises is necessary to prevent that nuisance⁴.

In determining whether to make a closure order in respect of any premises, the senior police officer must have regard, in particular, to the conduct of each appropriate person⁵ in relation to the disorder or nuisance⁶.

A closure order must specify the premises to which it relates, specify the period for which the premises are to be closed, specify the grounds on which it is made, and state the effect of the statutory provisions⁷ with regard to extension and cancellation of closure orders, application to and consideration of such an order by the magistrates' court and appeals from such courts' decisions⁸. A closure order in respect of any relevant premises comes into force at the time a constable⁹ gives notice of it to an appropriate person who is connected with any of the activities to which the disorder or nuisance relates¹⁰.

A person commits an offence if, without reasonable excuse, he permits relevant premises to be open¹¹ in contravention of a closure order or any extension¹² of it¹³.

A constable may use such force as may be necessary for the purposes of closing premises in compliance with a closure order¹⁴.

Where, before the end of the period for which relevant premises are to be closed under a closure order or any extension of it (the 'closure period'), the responsible senior police officer¹⁵ reasonably believes that:

- 584 (a) a relevant magistrates' court¹⁶ will not have determined whether to exercise its statutory powers¹⁷ in respect of the closure order, and any extension of it, by the end of the closure period; and
- 585 (b) the conditions for an extension are satisfied,

he may extend the closure period for a further period not exceeding 24 hours beginning with the end of the previous closure period¹⁸. The conditions for an extension are that:

- 586 (i) in the case of an order made by virtue of head (1) above, closure is necessary in the interests of public safety because of disorder or likely disorder on, or in the vicinity of and related to, the premises;

- 587 (ii) in the case of an order made by virtue of head (2) above, closure is necessary to ensure that no public nuisance is, or is likely to be, caused by noise coming from the premises¹⁹.

An extension in relation to any relevant premises comes into force when a constable gives notice of it to an appropriate person connected with any of the activities to which the disorder or nuisance relates or is expected to relate²⁰; but the extension does not come into force unless the notice is given before the end of the previous closure period²¹.

A constable is not liable for relevant damages²² in respect of any act or omission of his in the performance or purported performance of his functions in relation to a closure order or any extension of it²³; and a chief officer of police is not liable for relevant damages in respect of any act or omission of a person in the performance or purported performance, while under the direction or control of such a chief officer, of a function of that person in relation to a closure order, or any extension of it²⁴. These exemptions from liability do not, however apply, if the act or omission is shown to have been in bad faith, or so as to prevent an award of damages in respect of an act or omission on the grounds that the act or omission was unlawful as being incompatible with Convention rights²⁵ under the Human Rights Act 1998²⁶. Nor do they affect any other exemption from liability for damages, whether at common law or otherwise²⁷.

1 'Senior police officer' means a police officer of, or above, the rank of inspector: Licensing Act 2003 ss 161(8), 171(5).

2 A closure order is an order under the Licensing Act 2003 s 161 requiring relevant premises (as to the meaning of which see note 3) to be closed for a period not exceeding 24 hours beginning with the coming into force of the order: ss 161(2), 171(5).

3 'Relevant premises' means premises in respect of which one or more of the following has or have effect: (1) a premises licence; (2) a temporary event notice: ss 161(8), 171(5). As to the meaning of 'premises' see PARA 27 note 12. As to the meaning of 'premises licence' see PARA 53 note 1; and as to the meaning of 'temporary event notice' see PARA 108. As to when a temporary event notice has effect see s 171(6), cited in PARA 168 note 3.

4 Licensing Act 2003 s 161(1).

5 As to the meaning of 'appropriate person' see PARA 168 note 7.

6 Licensing Act 2003 s 161(3).

7 As to the effect of the Licensing Act 2003 162-168: see PARAS 169-172.

8 Licensing Act 2003 s 161(4).

9 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

10 Licensing Act 2003 s 161(5). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.

11 As to when relevant premises are open see PARA 168 note 7.

12 'Extension', in relation to a closure order, means an extension of the order under the Licensing Act 2003 s 162 (see PARA 169): s 171(5).

13 Licensing Act 2003 s 161(6). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000, or to both: s 161(7).

14 Licensing Act 2003 s 169.

15 'Responsible senior police officer', in relation to a closure order, means: (1) the senior police officer who made the order; or (2) if another senior police officer is designated for the purpose by the chief officer of police for the police area in which the premises are situated, that other officer: Licensing Act 2003 s 171(5).

16 'Relevant magistrates' court', in relation to any relevant premises, means a magistrates' court acting in the local justice area in which the premises are situated: s 171(5) (definition amended by SI 2005/886). As to magistrates' courts see **MAGISTRATES**. As to the meaning of 'premises' see PARA 27 note 12.

17 ie its powers under the Licensing Act 2003 s 165(2): see PARA 171.

18 Licensing Act 2003 s 162(1). It appears that more than one extension may be made.

19 Licensing Act 2003 s 162(2).

20 Licensing Act 2003 s 162(3).

21 Licensing Act 2003 s 162(4).

22 For these purposes, 'relevant damages' means damages awarded in proceedings for judicial review, the tort of negligence or misfeasance in public office: Licensing Act 2003 s 170(5).

23 See the Licensing Act 2003 s 170(1). Section 170(1) is amended by the Violent Crime Reduction Act 2006 s 24(2)(a) but that amendment is not relevant for these purposes.

24 See the Licensing Act 2003 s 170(2)(a) (substituted by the Violent Crime Reduction Act 2006 s 24(3)).

25 ie unlawful as a result of the Human Rights Act 1998 s 6(1): see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to Convention rights see s 1(3), Sch 1.

26 Licensing Act 2003 s 170(3).

27 Licensing Act 2003 s 170(4).

UPDATE

168-182 Closure of Premises

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

168-181 Closure under the Licensing Act 2003 ... Closure of premises for the unauthorised sale of alcohol

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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170. Cancellation of closure order.

The responsible senior police officer¹:

588 (1) may cancel a closure order² and any extension³ of it at any time after the making of the order, but before a relevant magistrates' court⁴ has determined whether to exercise its statutory powers⁵ in respect of the order and any extension of it⁶;

589 (2) must cancel a closure order and any extension of it if he does not reasonably believe:

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41. (a) in the case of an order made because of disorder or anticipated disorder⁷, that closure is necessary in the interests of public safety because of disorder or likely disorder on, or in the vicinity of and related to, the premises⁸;

42. (b) in the case of an order made because of public nuisance caused by noise⁹, that closure is necessary to ensure that no public nuisance is, or is likely to be, caused by noise coming from the premises¹⁰.

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Where a closure order and any extension of it are cancelled under the above provisions, the responsible senior police officer must give notice of the cancellation to an appropriate person¹¹ connected with any of the activities related to the disorder, or anticipated disorder, or nuisance in respect of which the closure order was made¹².

1 As to the meaning of 'responsible senior police officer' see PARA 169 note 15.

2 As to the meaning of 'closure order' see PARA 169 note 2.

3 As to the meaning of 'extension' see PARA 169 note 12.

4 As to the meaning of 'relevant magistrates' court' see PARA 169 note 16.

5 Ie its powers under the Licensing Act 2003 s 165(2); see PARA 171.

6 Licensing Act 2003 s 163(1).

7 Ie an order made by virtue of the Licensing Act 2003 s 161(1)(a); see PARA 169 at head (1).

8 As to the meaning of 'premises' see PARA 27 note 12.

9 Ie an order made by virtue of the Licensing Act 2003 s 161(1)(b); see PARA 169 at head (2).

10 Licensing Act 2003 s 163(2).

11 As to the meaning of 'appropriate person' see PARA 168 note 7.

12 Licensing Act 2003 s 163(3). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.

UPDATE

168-182 Closure of Premises

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

168-181 Closure under the Licensing Act 2003 ... Closure of premises for the unauthorised sale of alcohol

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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171. Consideration of closure order by magistrates' court.

The responsible senior police officer¹ must, as soon as reasonably practicable after a closure order² comes into force³ in respect of any relevant premises⁴, apply to a relevant magistrates' court⁵ for it to consider the order and any extension⁶ of it⁷. Where an application is so made in respect of licensed premises, the responsible senior officer must also notify the relevant licensing authority⁸ that a closure order has come into force, of the contents of the order and of any extension of it, and of the application⁹.

A relevant magistrates' court must, as soon as reasonably practicable after receiving such an application, hold a hearing to consider whether it is appropriate to exercise any of the court's powers under heads (1) to (4) below in relation to the closure order or any extension of it, and determine whether to exercise any of those powers¹⁰. Evidence given for the purposes of such proceedings must be given on oath¹¹. The relevant magistrates' court may:

- 590 (1) revoke the closure order and any extension of it;
- 591 (2) order the premises to remain, or to be, closed¹² until such time as the relevant licensing authority has made a determination in respect of the order for the purposes of a review of the premises licence¹³;
- 592 (3) order the premises to remain or to be closed until that time subject to such exceptions as may be specified in the order;
- 593 (4) order the premises to remain or to be closed until that time unless such conditions as may be specified in the order are satisfied¹⁴.

Heads (1) to (4) above do not, however, apply if, before the relevant magistrates' court discharges its functions under them, the premises cease to be relevant premises¹⁵; and any order made under those heads ceases to have effect if the premises cease to be relevant premises¹⁶.

A person commits an offence if, without reasonable excuse, he permits relevant premises to be open in contravention of an order under head (2), head (3) or head (4) above¹⁷.

Any person aggrieved by a decision of a magistrates' court under the above provisions may appeal to the Crown Court against the decision¹⁸.

1 As to the meaning of 'responsible senior police officer' see PARA 169 note 15.

2 As to the meaning of 'closure order' see PARA 169 note 2.

3 As to when a closure order comes into force see PARA 169 text and notes 9-10.

4 As to the meaning of 'relevant premises' see PARA 169 note 3.

5 As to the meaning of 'relevant magistrates' court' see PARA 169 note 16.

6 As to the meaning of 'extension' see PARA 169 note 12.

7 Licensing Act 2003 s 164(1).

8 As to the meaning of 'relevant licensing authority' in relation to any licensed premises see PARA 53 note 13 (definition applied by the Licensing Act 2003 s 171(5)); and as to the meaning of 'licensed premises' see PARA 134 note 2. As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

9 Licensing Act 2003 s 164(2). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.

10 Licensing Act 2003 s 165(1). The powers conferred on a magistrates' court by s 165 are to be exercised in the place required by the Magistrates' Courts Act 1980 for the hearing of a complaint and may be exercised by a single justice: Licensing Act 2003 s 165(9). In the case of licensed premises, the relevant magistrates' court must notify the relevant licensing authority of any determination it makes under s 165(1)(b): s 165(4). As to the meaning of 'licensed premises' see PARA 134 note 2.

11 Licensing Act 2003 s 165(10).

12 In determining whether the premises will be, or will remain, closed the relevant magistrates' court must, in particular, consider whether (1) in the case of an order made by virtue of the Licensing Act 2003 s 161(1)(a) (see PARA 169 at head (1)), closure is necessary in the interests of public safety because of disorder or likely disorder on the premises, or in the vicinity of and related to, the premises; (2) in the case of an order made by virtue of s 161(1)(b) (see PARA 169 at head (2)), closure is necessary to ensure that no public nuisance is, or is likely to be, caused by noise coming from the premises: s 165(3).

13 Is a determination for the purposes of the Licensing Act 2003 s 167: see PARA 172.

14 Licensing Act 2003 s 165(2).

15 Licensing Act 2003 s 165(5).

16 Licensing Act 2003 s 165(6).

17 Licensing Act 2003 s 165(7). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000, or to both: s 165(8).

18 Licensing Act 2003 s 166(1). Such an appeal under must be commenced by notice of appeal given by the appellant to the designated officer for the magistrates' court within the period of 21 days beginning with the day the decision appealed against was made: s 166(2) (amended by SI 2005/886).

UPDATE

168-182 Closure of Premises

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

168-181 Closure under the Licensing Act 2003 ... Closure of premises for the unauthorised sale of alcohol

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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172. Review of premises licence following closure order.

Where a closure order¹ has come into force in relation to premises² in respect of which a premises licence³ has effect, and the relevant licensing authority⁴ has received a notice of the magistrates' court's determination⁵ in relation to the order and any extension⁶ of it, the relevant licensing authority must review the premises licence⁷. The authority must reach a determination on the review no later than 28 days after the day on which it receives the above-mentioned notice⁸.

The Secretary of State must by regulations:

- 594 (1) require the relevant licensing authority to give, to the holder of the premises licence and each responsible authority⁹, notice of the review, of the closure order and any extension of it, and of any order made¹⁰ in relation to it by the magistrates' court¹¹;
- 595 (2) require the authority to advertise the review and invite representations about it to be made to the authority by responsible authorities and interested parties¹²;
- 596 (3) prescribe the period during which representations may be made by the holder of the premises licence, any responsible authority or any interested party¹³;
- 597 (4) require any notice under head (1) above or advertisement under head (2) above to specify that period¹⁴.

The relevant licensing authority must:

- 598 (a) hold a hearing¹⁵ to consider the closure order and any extension of it, any order made in relation to it by the magistrates' court¹⁶ and any relevant representations¹⁷; and
- 599 (b) subject to the statutory requirements to include certain mandatory conditions in premises licences¹⁸, take such of the steps mentioned in heads (i) to (v) below, if any, as it considers necessary for the promotion of the licensing objectives¹⁹.

Those steps are:

- 600 (i) to modify the conditions²⁰ of the premises licence²¹;
- 601 (ii) to exclude a licensable activity²² from the scope of the licence²³;
- 602 (iii) to remove the designated premises supervisor²⁴ from the licence²⁵;
- 603 (iv) to suspend the licence for a period not exceeding three months²⁶; or
- 604 (v) to revoke the licence²⁷.

Where a licensing authority determines a review under these provisions it must notify the determination and its reasons for making it to the holder of the licence, to any person who made relevant representations, and to the chief officer of police²⁸ for the police area, or each police area, in which the premises are situated²⁹.

A determination takes effect in accordance with the following provisions³⁰. Such a decision does not have effect until the relevant time³¹, which means, in relation to any decision, the end of the period given for appealing against the decision or, if the decision is appealed against, the time the appeal is disposed of³². Where, however, the relevant licensing authority decides, on a review under the provisions set out above, to take one or more of the steps mentioned in heads (i) to (iv) above, and the premises to which the licence relates have been closed, by virtue of an order made by the magistrates' court³³, until that decision was made, then the decision by the relevant licensing authority to take any of the steps mentioned in those heads takes effect when it is notified³⁴ to the holder of the licence³⁵; but the magistrates' court may suspend that decision pending an appeal³⁶ and the relevant licensing authority may, on such terms as it thinks fit, suspend the operation of that decision, in whole or in part, until the relevant time³⁷.

Where the relevant licensing authority decides on a review under the above provisions to revoke the premises licence, and the premises to which the licence relates have been closed, by virtue of an order made by the magistrates' court³⁸, until that decision was made, then subject to the power of the magistrates' court to modify the closure order pending an appeal³⁹, the premises must remain closed, but the licence otherwise remains in force, until the relevant time⁴⁰. A person commits an offence if, without reasonable excuse, he allows premises to be open⁴¹ in contravention of this provision⁴².

Where, on a review of a premises licence under the above provisions, the relevant licensing authority decides under head (b) above to take any of the steps mentioned in heads (i) to (v) above, in relation to a premises licence for those premises, or not to take any such step, an appeal⁴³ may be made against that decision by the holder of the premises licence, or by any other person who made relevant representations in relation to the review⁴⁴. Where an appeal is so made against a decision to take any of the steps mentioned in heads (i) to (iv) above, the magistrates' court may, in a case where the premises were closed when the decision was taken⁴⁵:

- 605 (A) if the relevant licensing authority has not made an order suspending the operation of the decision in whole or in part⁴⁶, make any such order that could have been made by the relevant licensing authority; or
- 606 (B) if the authority has made such an order, cancel it or substitute for it any such order which could have been made by the authority⁴⁷.

Where an appeal is so made in a case where the premises were closed when the decision to revoke the premises licence was made and were to remain closed pending an appeal⁴⁸, the magistrates' court may, on such conditions as it thinks fit, order that the premises are not to remain closed⁴⁹ pending the appeal⁵⁰.

The procedure on an appeal, and the general powers of the magistrates' court which hears it, have already been discussed⁵¹.

1 As to the meaning of 'closure order' see PARA 169 note 2.

2 As to the meaning of 'premises' see PARA 27 note 12.

3 As to the meaning of 'premises licence' see PARA 53 note 1.

4 As to the meaning of 'relevant licensing authority' see PARA 53 note 13 (definition applied by the Licensing Act 2003 s 171(5)). As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

5 I.e a notice under the Licensing Act 2003 s 165(4): see PARA 171.

6 As to the meaning of 'extension' see PARA 169 note 12.

7 See the Licensing Act 2003 s 167(1), (2).

8 Licensing Act 2003 s 167(3).

9 As to the meaning of 'responsible authority' see PARA 53 note 26 (definition applied by the Licensing Act 2003 s 167(14)).

10 Ie under the Licensing Act 2003 s 165(2): see PARA 171.

11 See the Licensing Act 2003 s 167(4)(a). Within the period of one working day starting on the day after the day on which the relevant licensing authority received the notice under s 165(4) from the magistrates' court, the relevant licensing authority must give to the holder of the premises licence and each responsible authority notice in writing of (1) the review; (2) the dates between which interested parties and responsible authorities may make representations relating to the review to the relevant licensing authority; (3) the closure order and any extension of it; and (4) any order made in relation to it under s 165(2): Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 37. As to the meaning of 'working day' see PARA 44 note 10; and as to the meaning of 'interested party' see PARA 53 note 24 (definition applied by the Licensing Act 2003 s 167(14)).

12 Licensing Act 2003 s 167(4)(b). As to the method of advertisement see the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, regs 38(1), (2)(a), 39 (amended by SI 2007/2502), cited in PARA 79 note 12.

13 Licensing Act 2003 s 167(4)(c). An interested party, or a responsible authority making representations to a relevant licensing authority, may make those representations, in the case of a review of a premises licence following a closure order, at any time up to and including seven days starting on the day after the day on which the authority received the notice under s 165(4) in relation to the closure order and any extension to it: Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42, reg 22(1) (a).

14 Licensing Act 2003 s 167(4)(c); and see notes 11-12.

15 Notice of the hearing must be given to the holder of the premises licence in respect of which the review has been made; and the notice must be accompanied by the relevant representations (as defined in the Licensing Act 2003 s 167(9): see note 17) which have been made: Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 7, Sch 3, Table para 14. Notice must also be given to persons who have made relevant representations: reg 6, Sch 2, Table para 15. The hearing must be held within ten working days beginning with the day after the relevant licensing authority receives the notice given under the Licensing Act 2003 s 165(4) (see PARA 171): Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 5, Sch 1, Table para 15. As to the procedure at the hearing see PARA 44 et seq.

16 Ie any order under the Licensing Act 2003 s 165(2): see PARA 171.

17 Licensing Act 2003 s 167(5)(a). For these purposes, 'relevant representations' means representations which are relevant to one or more of the licensing objectives, and which meet the requirements of s 167(10): s 167(9). Those requirements are (1) that the representations are made by the holder of the premises licence, a responsible authority or an interested party within the period prescribed under s 167(4)(c) (see head (3) in the text); (2) that they have not been withdrawn; and (3) if they are made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious: s 167(10). Where the relevant licensing authority determines that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for that determination: s 167(11). As to such notification see the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44, reg 31, cited in PARA 55 note 4.

18 The Licensing Act 2003 s 167(5)(b) (see head (b) in the text) is subject to ss 19, 20, 21 (requirement to include certain conditions in premises licences: see PARA 57): s 167(7).

19 Licensing Act 2003 s 167(5)(b). As to the licensing objectives see PARA 35.

20 For this purpose the conditions of a premises licence are modified if any of them is altered or omitted or any new condition is added: s 167(6).

21 Licensing Act 2003 s 167(6)(a). Where the authority takes a step within s 167(6)(a), it may provide that the modification is to have effect only for a specified period (not exceeding three months): s 167(8).

- 22 As to licensable activities see PARA 28.
- 23 Licensing Act 2003 s 167(6)(b). Where the authority takes a step within s 167(6)(b), it may provide that the exclusion is to have effect only for a specified period (not exceeding three months): s 167(8).
- 24 As to the meaning of 'designated premises supervisor' see PARA 55 note 4.
- 25 Licensing Act 2003 s 167(6)(c).
- 26 Licensing Act 2003 s 167(6)(d).
- 27 Licensing Act 2003 s 167(6)(e).
- 28 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.
- 29 Licensing Act 2003 s 167(12). As to the method of giving notice see s 184; and PARA 39 text and notes 11-14.
- 30 Licensing Act 2003 s 167(13).
- 31 Licensing Act 2003 s 168(1).
- 32 Licensing Act 2003 s 168(2).
- 33 Ie an order made under the Licensing Act 2003 s 165(2)(b), (c) or (d): see PARA 171.
- 34 Ie under the Licensing Act 2003 s 167(12).
- 35 Licensing Act 2003 s 168(3), (4).
- 36 See the Licensing Act 2003 Sch 5 para 18(3); and the text and notes 45-47.
- 37 Licensing Act 2003 s 168(5).
- 38 See note 33.
- 39 Ie subject to the Licensing Act 2003 Sch 5 para 18(4): see the text and notes 48-50.
- 40 Licensing Act 2003 s 168(6), (7).
- 41 As to when premises are open see PARA 168 note 7.
- 42 Licensing Act 2003 s 168(8). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000, or to both: s 168(9).
- 43 Ie to a magistrates' court: see PARA 52.
- 44 Licensing Act 2003 Sch 5 para 18(1), (2). On an appeal under Sch 5 para 18 by a person other than the holder of the premises licence, that holder is to be the respondent in addition to the licensing authority that made the decision: Sch 5 para 18(6).
- 45 Ie in a case within the Licensing Act 2003 s 168(3): see the text and note 33.
- 46 Ie an order under the Licensing Act 2003 s 168(5): see the text and note 37.
- 47 Licensing Act 2003 Sch 5 para 18(3) (Sch 5 para 18(3), (4) amended by SI 2005/886).
- 48 Ie in a case within the Licensing Act 2003 s 168(6): see the text and notes 38-39.
- 49 Ie it may order that the Licensing Act 2003 s 168(7) (see the text and note 40) is not to apply to the premises.
- 50 Licensing Act 2003 Sch 5 para 18(4) (as amended: see note 47).
- 51 See PARA 52.

UPDATE

168-182 Closure of Premises

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

168-181 Closure under the Licensing Act 2003 ... Closure of premises for the unauthorised sale of alcohol

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

172 Review of premises licence following closure order

NOTE 13--SI 2005/42 reg 22(1) amended: SI 2009/1809.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(7) CLOSURE OF PREMISES/(i) Closure under the Licensing Act 2003/C. CLOSURE NOTICES/173. Closure notice where alcohol has been persistently sold to children.

C. CLOSURE NOTICES

173. Closure notice where alcohol has been persistently sold to children.

A relevant officer¹ may give a notice (a 'closure notice')² applying to any premises³ if:

- 607 (1) there is evidence that a person ('the offender') has committed an offence of persistently selling alcohol⁴ to children⁵ in relation to those premises;
- 608 (2) the relevant officer considers that the evidence is such that, if the offender were prosecuted for the offence, there would be a realistic prospect of his being convicted; and
- 609 (3) the offender is still, at the time when the notice is given, the holder of a premises licence⁶ in respect of those premises, or one of the holders of such a licence⁷.

A closure notice is a notice which proposes a prohibition for a period not exceeding 48 hours on sales of alcohol on the premises in question and offers the opportunity to discharge all criminal liability in respect of the alleged offence by the acceptance of the prohibition proposed by the notice⁸. It must:

- 610 (a) be in the form prescribed by regulations made by the Secretary of State⁹;
- 611 (b) specify the premises to which it applies;
- 612 (c) give such particulars of the circumstances believed to constitute the alleged offence, including the sales to which it relates, as are necessary to provide reasonable information about it;
- 613 (d) specify the length of the period during which it is proposed that sales of alcohol should be prohibited on those premises¹⁰;
- 614 (e) specify when that period would begin if the prohibition is accepted¹¹;
- 615 (f) explain what would be the effect of the proposed prohibition and the consequences under the Licensing Act 2003, including the maximum penalties, of a sale of alcohol on the premises during the period for which it is in force;
- 616 (g) explain the right of every person who, at the time of the alleged offence, held or was one of the holders of a premises licence in respect of those premises to be tried for that offence; and
- 617 (h) explain how that right may be exercised and how, where it is not exercised, the proposed prohibition may be accepted¹².

A closure notice may be served on the premises to which it applies only by being handed by a constable¹³ or trading standards officer to a person on the premises who appears to the constable or trading standards officer to have control of or responsibility for the premises, whether on his own or with others, and only at a time when it appears to that constable or trading standards officer that licensable activities¹⁴ are being carried on there¹⁵. A copy of every closure notice so given must be sent to the holder of the premises licence for the premises to which it applies at whatever address for that person is for the time being set out in the licence¹⁶.

A closure notice must not be given more than three months after the time of the last of the sales to which the alleged offence relates¹⁷ and no more than one closure notice may be given in respect of offences relating to the same sales; nor may such a notice be given with regard to an offence in respect of which a prosecution has already been brought¹⁸.

Where a closure notice is given under the above provisions in respect of an alleged offence of persistently selling alcohol to children¹⁹, no proceedings may be brought for the alleged offence or any related offence²⁰ at any time before the time when the prohibition proposed by the notice would take effect²¹. If before that time every person who, at the time of the notice, holds or is one of the holders of the premises licence for the premises in question accepts the proposed prohibition in the manner specified in the notice:

- 618 (i) that prohibition takes effect at the time so specified in relation to the premises in question; and
- 619 (ii) no proceedings may subsequently be brought against any such person for the alleged offence or any related offence²².

If the prohibition contained in a closure notice takes effect in accordance with head (i) above in relation to any premises, so much of the premises licence for those premises as authorises the sale by retail²³ of alcohol on those premises is suspended for the period specified in the closure notice²⁴.

Neither a constable²⁵ nor a trading standards officer is liable for relevant damages²⁶ in respect of any act or omission of his in the performance or purported performance of his functions in relation to a closure notice²⁷; and neither a chief officer of police²⁸ nor a local weights and measure authority is liable for relevant damages in respect of any act or omission of a person in the performance or purported performance, while under the direction or control of such a chief officer or local weights and measure authority, of a function of that person in relation to a closure notice²⁹. These exemptions from liability do not, however apply, if the act or omission is shown to have been in bad faith, or so as to prevent an award of damages in respect of an act or omission on the grounds that the act or omission was unlawful as being incompatible with Convention rights³⁰ under the Human Rights Act 1998³¹. Nor do they affect any other exemption from liability for damages, whether at common law or otherwise³².

1 For these purposes, 'relevant officer' means (1) a police officer of the rank of superintendent or above; or (2) an inspector of weights and measures appointed under the Weights and Measures Act 1985 s 72(1) (see **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 23); Licensing Act 2003 s 169A(11) (ss 169A, 169B added by the Violent Crime Reduction Act 2006 s 24(1)).

2 The Licensing Act 2003 s 184 (giving of notices: see PARA 39 text and notes 11-14) does not apply to a closure notice; but such a notice must be served on the premises to which it applies: s 169A(6) (as added: see note 1).

3 As to the meaning of 'premises' see PARA 27 note 12.

4 As to the meaning of 'alcohol' see PARA 30.

5 Is an offence under the Licensing Act 2003 s 147A: see PARA 145.

6 As to the meaning of 'premises licence' see PARA 53 note 1.

7 Licensing Act 2003 s 169A(1) (as added: see note 1).

8 Licensing Act 2003 s 169A(2) (as added: see note 1).

9 For the prescribed form of closure notice see the Licensing Act 2003 (Persistent Selling of Alcohol to Children) (Prescribed Form of Closure Notice) Regulations 2007, SI 2007/1183, reg 2, Schedule. As to the Secretary of State see PARA 2.

10 The period specified for these purposes must be not more than 48 hours: Licensing Act 2003 s 169A(4) (as added: see note 1).

11 The time specified as the time from which that period would begin must be not less than 14 days after the date of the service of the closure notice in accordance with the Licensing Act 2003 s 169A(6) (see note 2): s 169A(4) (as added: see note 1).

12 Licensing Act 2003 s 169A(3) (as added: see note 1). The provision included in the notice by virtue of s169A(3)(h) (see head (h) in the text) must (1) provide a means of identifying a police officer or trading standards officer to whom notice exercising the option to accept the prohibition may be given; (2) set out particulars of where and how that notice may be given to that police officer or trading standards officer; (3) require that notice to be given within 14 days after the date of the service of the closure notice; and (4) explain that the right to be tried for the alleged offence will be taken to have been exercised unless every person who, at the time of the notice, holds or is one of the holders of the premises licence for the premises in question accepts the proposed prohibition: s 169A(5) (as added: see note 1). For these purposes, 'trading standards officer', in relation to any premises to which a premises licence relates, means a person authorised by a local weights and measures authority to act in the area where those premises are situated in relation to proposed prohibitions contained in closure notices; and 'local weights and measures authority' has the meaning given by the Weights and Measures Act 1985 s 69 (see **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 20): Licensing Act 2003 s 171(5) (definitions added by the Violent Crime Reduction Act 2006 s 24(5)(b), (c)).

13 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq. A community support officer may also serve the notice: see the Police Reform Act 2002 Sch 4 para 5A (added by the Violent Crime Reduction Act 2006 s 24(6)). See further **POLICE**.

14 As to licensable activities see PARA 28.

15 Licensing Act 2003 s 169A(7) (as added: see note 1).

16 Licensing Act 2003 s 169A(8) (as added: see note 1).

17 Licensing Act 2003 s 169A(9) (as added: see note 1).

18 Licensing Act 2003 s 169A(10) (as added: see note 1).

19 See note 5.

20 For these purposes 'related offence', in relation to the alleged offence, means an offence under the Licensing Act 2003 s 146 or s 147 (see PARAS 143-144) in respect of any of the sales to which the alleged offence relates: s 169B(5) (as added: see note 1).

21 Licensing Act 2003 s 169B(1), (2) (as added: see note 1). The operation of s 169B is not affected by any contravention of s 169A(8) (see the text and note 16): s 169B(6) (as so added).

22 Licensing Act 2003 s 169B(3) (as added: see note 1).

23 As to the meaning of 'sale by retail' see PARA 30.

24 Licensing Act 2003 s 169B(4) (as added: see note 1).

25 For these purposes, references to a constable include references to a person exercising the powers of a constable by virtue of a designation under the Police Reform Act 2002 s 38 (community support officers etc: see note 13; and **POLICE**): Licensing Act 2003 s 170(4A) (added by the Violent Crime Reduction Act 2006 s 24(4)).

26 As to the meaning of 'relevant damages' for these purposes see PARA 169 note 22.

27 Licensing Act 2003 s 170(1) (amended by the Violent Crime Reduction Act 2006 s 24(2)(a), (b)).

28 In relation to a community support officer etc, this reference to a chief officer of police has effect as a reference to a police authority: Licensing Act 2003 s 170(4A) (as added: see note 25). As to police authorities see **POLICE**.

29 Licensing Act 2003 s 170(2)(b) (substituted by the Violent Crime Reduction Act 2006 s 24(3)).

30 Is unlawful as a result of the Human Rights Act 1998 s 6(1): see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to Convention rights see s 1(3), Sch 1.

31 Licensing Act 2003 s 170(3).

32 Licensing Act 2003 s 170(4).

UPDATE

168-182 Closure of Premises

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

168-181 Closure under the Licensing Act 2003 ... Closure of premises for the unauthorised sale of alcohol

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(ii) Closure of Premises Used for the Unauthorised Sale of Alcohol

174. Closure notices.

Where a constable¹ is satisfied that any premises² are being, or within the last 24 hours have been, used for the unauthorised sale of alcohol³ for consumption on, or in the vicinity of, the premises, he may serve a closure notice⁴ in respect of the premises⁵. A local authority⁶ has a corresponding power to serve a closure notice in such circumstances⁷. Such a notice must be served by the constable or local authority concerned on a person having control of, or responsibility for, the activities carried on at the premises⁸. A closure notice must also be served by the constable or local authority concerned on any person occupying another part of any building or other structure of which the premises form part if the constable or, as the case may be, the local authority concerned reasonably believes, at the time of serving notice, that the person's access to the other part of the building or other structure would be impeded if an order⁹ providing for the closure of the premises were made¹⁰. A closure notice may also be served by a constable or the local authority concerned on (1) any other person having control of, or responsibility for, the activities carried on at the premises; (2) any person who has an interest in the premises¹¹.

A closure notice served by a constable or local authority may be cancelled by a notice of cancellation served by a constable or, as the case may be, by the local authority concerned¹². Any such notice of cancellation has effect as soon as it is served by a constable or by the authority concerned on at least one person on whom the closure notice was served¹³. The constable or the local authority concerned must also serve the notice of cancellation on any other person on whom the closure notice was served¹⁴.

1 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

2 'Premises' includes any land or other place (whether enclosed or otherwise): Criminal Justice and Police Act 2001 s 28(1).

3 For these purposes, 'unauthorised sale', in relation to any alcohol, means any supply of the alcohol (within the meaning of the Licensing Act 2003 s 14: see PARA 53 note 18) which (1) is a licensable activity within the meaning of that Act (see PARA 28), but (2) is made otherwise than under and in accordance with an authorisation (within the meaning of s 136: see PARA 132 note 3); and 'alcohol' has the same meaning as in the Licensing Act 2003 (see PARA 30): Criminal Justice and Police Act 2001 s 28(1) (definition of 'alcohol' added, and definition of 'unauthorised sale' substituted for that of 'unlicensed sale', by the Licensing Act 2003 Sch 6 paras 119, 127(a), (c)). 'Sale' includes exposure for sale: Criminal Justice and Police Act 2001 s 28(1).

4 'Notice' means notice in writing: Criminal Justice and Police Act 2001 s 28(1). A closure notice must: (1) specify the alleged use of the premises and the grounds on which the constable or (as the case may be) the local authority (see note 6) concerned is satisfied as mentioned in s 19(1) or (as the case may be) s 19(2); (2) state the effect of s 20 (see PARA 175); and (3) specify the steps which may be taken to ensure that the alleged use of the premises ceases or (as the case may be) does not recur: s 19(6). As to the service of notices see PARA 181.

5 Criminal Justice and Police Act 2001 s 19(1) (s 19(1), (2) amended by the Licensing Act 2003 Sch 6 paras 119, 126(a)).

6 'Local authority' means (1) in relation to England, a county council, a district council, a London borough council, the Common Council of the City of London in its capacity as a local authority, and the Council of the

Isles of Scilly; (2) in relation to Wales, a county council or a county borough council: Criminal Justice and Police Act 2001 s 28(2).

7 See the Criminal Justice and Police Act 2001 s 19(2) (as amended: see note 5).

8 Criminal Justice and Police Act 2001 s 19(3). For the purposes of s 19(3), (5), a person having control of, or responsibility for, the activities carried on at the premises includes a person who: (1) derives or seeks to derive profit from the carrying on of the activities; (2) manages the activities; (3) employs any person to manage the activities; or (4) is involved in the conduct of the activities: s 19(10).

9 See an order under the Criminal Justice and Police Act 2001 s 21: see PARA 176.

10 Criminal Justice and Police Act 2001 s 19(4).

11 Criminal Justice and Police Act 2001 s 19(5). See also s 19(10), cited in note 8. References in ss 19-27 (see the text and notes 1-10; and PARAS 175-181) to a person who has an interest in the premises are references to any person who is the owner, leaseholder or occupier of the premises: s 28(3).

12 Criminal Justice and Police Act 2001 s 19(7).

13 Criminal Justice and Police Act 2001 s 19(8).

14 Criminal Justice and Police Act 2001 s 19(9).

UPDATE

168-182 Closure of Premises

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

168-181 Closure under the Licensing Act 2003 ... Closure of premises for the unauthorised sale of alcohol

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(7) CLOSURE OF PREMISES/(ii) Closure of Premises Used for the Unauthorised Sale of Alcohol/175. Applications for closure orders.

175. Applications for closure orders.

Where a closure notice¹ has been served², a constable³ or, as the case may be, the local authority⁴ concerned may make a complaint to a justice of the peace for a closure order⁵. Such a complaint must be made not less than seven days, and not more than six months, after the service of the closure notice⁶. No such complaint may be made if the constable or, as the case may be, the local authority is satisfied that the use of the premises⁷ for the unauthorised sale of alcohol⁸ for consumption on, or in the vicinity of, the premises has ceased and that there is no reasonable likelihood that the premises will be so used in the future⁹.

Where a complaint has been made to a justice of the peace under the above provisions, the justice may issue a summons to answer to the complaint¹⁰. Where a summons is served in accordance with these provisions, a notice stating the date, time and place at which the complaint will be heard must be served on all persons¹¹ on whom the closure notice was served¹². Except as otherwise provided, the procedure on a complaint for a closure order must be in accordance with the Magistrates' Courts Act 1980¹³.

1 As to closure notices see PARA 174.

2 I.e. under the Criminal Justice and Police Act 2001 s 19(3): see PARA 174.

3 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

4 As to the meaning of 'local authority' see PARA 174 note 6.

5 Criminal Justice and Police Act 2001 s 20(1) (amended by SI 2005/886). As to closure orders see the Criminal Justice and Police Act 2001 s 21; and PARA 176.

6 Criminal Justice and Police Act 2001 s 20(2). As to service of the notice see s 19(3); and PARA 174.

7 As to the meaning of 'premises' see PARA 174 note 2.

8 As to the meanings of 'unauthorised sale of alcohol' and 'alcohol' see PARA 174 note 3.

9 Criminal Justice and Police Act 2001 s 20(3) (amended by the Licensing Act 2003 Sch 6 paras 119, 126(b)).

10 Criminal Justice and Police Act 2001 s 20(4). The summons must be directed to the person on whom the closure notice was served under s 19(3) (see PARA 174), and any other person on whom the closure notice was served under s 19(5)(a) (see PARA 174 at head (1)): s 20(5).

11 I.e. all persons on whom the closure notice was served under s 19(4) (see PARA 174) and 19(5)(b) (see PARA 174 at head (2)).

12 Criminal Justice and Police Act 2001 s 20(6).

13 Criminal Justice and Police Act 2001 s 20(7). As to the hearing of complaints see **MAGISTRATES** vol 29(2) (Reissue) PARA 681 et seq.

UPDATE

168-182 Closure of Premises

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

168-181 Closure under the Licensing Act 2003 ... Closure of premises for the unauthorised sale of alcohol

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(7) CLOSURE OF PREMISES/(ii) Closure of Premises Used for the Unauthorised Sale of Alcohol/176. Closure orders.

176. Closure orders.

On hearing a complaint for a closure order¹, the court may make such order as it considers appropriate if it is satisfied that: (1) the closure notice² was duly served³; and (2) the premises⁴ continue to be used for the unauthorised sale of alcohol⁵ for consumption on, or in the vicinity of, the premises or there is a reasonable likelihood that the premises will be so used in the future⁶. A closure order may, in particular, require:

- 620 (a) the premises in respect of which the closure notice was served to be closed immediately to the public and to remain closed until a constable⁷ or, as the case may be, the local authority⁸ concerned makes a certificate⁹ that the need for the order has ceased¹⁰;
- 621 (b) the use of the premises for the unauthorised sale of alcohol for consumption on, or in the vicinity of, the premises to be discontinued immediately;
- 622 (c) any defendant to pay into court such sum as the court determines and that the sum will not be released by the court to that person until the other requirements of the order are met¹¹.

The complainant must, as soon as practicable after the making of a closure order¹², give notice of the order by fixing a copy of it in a conspicuous position on the premises in respect of which it was made¹³.

There is a right of appeal to the Crown Court against a closure order¹⁴.

1 Ie a complaint made under the Criminal Justice and Police Act 2001 s 20(1): see PARA 175.

2 As to closure notices see PARA 174.

3 Ie under the Criminal Justice and Police Act 2001 s 19(3): see PARA 174.

4 As to the meaning of 'premises' see PARA 174 note 2.

5 As to the meanings of 'unauthorised sale of alcohol' and 'alcohol' see PARA 174 note 3.

6 Criminal Justice and Police Act 2001 s 21(1) (s 21(1), (2) amended by the Licensing Act 2003 Sch 6 paras 119, 126(c)).

7 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

8 As to the meaning of 'local authority' see PARA 174 note 6.

9 Ie under the Criminal Justice and Police Act 2001 s 22(1): see PARA 178.

10 An order of the kind mentioned in head (a) in the text may, in particular, include such conditions as the court considers appropriate relating to: (1) the admission of persons onto the premises; (2) the access by persons to another part of any building or other structure of which the premises form part: Criminal Justice and Police Act 2001 s 21(3).

11 Criminal Justice and Police Act 2001 s 21(2) (as amended: see note 6). A sum which has been ordered to be paid into court under s 21 must be paid to the designated officer for the court: s 21(5) (amended by the Courts Act 2003 Sch 8 para 401).

12 le an order under the Criminal Justice and Police Act 2001 s 21.

13 Criminal Justice and Police Act 2001 s 21(4).

14 See PARA 180.

UPDATE

168-182 Closure of Premises

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

168-181 Closure under the Licensing Act 2003 ... Closure of premises for the unauthorised sale of alcohol

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(7) CLOSURE OF PREMISES/(ii) Closure of Premises Used for the Unauthorised Sale of Alcohol/177. Enforcement of closure orders.

177. Enforcement of closure orders.

Where a closure order¹ has been made, a constable² or an authorised person³ may, if necessary using reasonable force: (1) at any reasonable time enter the premises⁴ concerned; and (2) having so entered the premises, do anything reasonably necessary for the purpose of securing compliance with the order⁵. A constable or an authorised person seeking to enter any premises in exercise of such powers must, if required by or on behalf of the owner or occupier or person in charge of the premises, produce evidence of his identity, and of his authority, before entering the premises⁶. Any person who intentionally obstructs a constable or an authorised person in the exercise of such powers is guilty of an offence and is liable on summary conviction:

- 623 (a) where the offence was committed in respect of a constable, to imprisonment for a term not exceeding one month or to a fine not exceeding level 5 on the standard scale, or to both;
- 624 (b) where the offence was committed in respect of an authorised person, to a fine not exceeding level 5 on the standard scale⁷.

A person who, without reasonable excuse, permits premises to be open in contravention of a closure order is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000, or to both⁸; and a person who, without reasonable excuse, otherwise fails to comply with, or does an act in contravention of, a closure order is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or to both⁹.

1 As to closure orders see PARA 176.

2 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

3 For these purposes, 'an authorised person' means a person authorised for the purposes of the Criminal Justice and Police Act 2001 s 25 (see the text and notes 1-2, 4-9) by a local authority in respect of premises situated in the area of the authority: s 25(6). As to the meaning of 'local authority' see PARA 174 note 6.

4 As to the meaning of 'premises' see PARA 174 note 2.

5 Criminal Justice and Police Act 2001 s 25(1). Where an offence under s 25 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, he as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly: s 26(1). Where the affairs of a body corporate are managed by its members, s 26(1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 26(2).

6 Criminal Justice and Police Act 2001 s 25(2).

7 Criminal Justice and Police Act 2001 s 25(3). As to the standard scale see PARA 17 note 21; and as to offences by bodies corporate see note 5.

As from a day to be appointed under the Criminal Justice Act 2003 s 336(3), the Criminal Justice and Police Act 2001 s 25(3) is amended so as to refer to 51 weeks instead of one month: see the Criminal Justice Act 2003 s

280(2), (3), Sch 26 para 56(1), (2)(a)). At the date at which this volume states the law, no such day had been appointed and that amendment was not in force.

8 Criminal Justice and Police Act 2001 s 25(4). As to offences by bodies corporate see s 26; and note 5.

As from a day to be appointed (see note 7), the provisions of s 25(4), (5) are amended so as to refer to 51 weeks instead of three months: see the Criminal Justice Act 2003 Sch 26 para 56(1), (2)(b). At the date at which this volume states the law, no such day had been appointed and that amendment was not in force.

9 Criminal Justice and Police Act 2001 s 25(5); and see note 8. As to offences by bodies corporate see note 5.

UPDATE

168-182 Closure of Premises

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

168-181 Closure under the Licensing Act 2003 ... Closure of premises for the unauthorised sale of alcohol

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(7) CLOSURE OF PREMISES/(ii) Closure of Premises Used for the Unauthorised Sale of Alcohol/178. Termination of closure orders by constable or local authority.

178. Termination of closure orders by constable or local authority.

Where a closure order¹ has been made, a constable² or, as the case may be, the local authority³ concerned may make a certificate to the effect that the constable or the authority is satisfied that the need for the order has ceased⁴. Where such a certificate has been made, the closure order ceases to have effect⁵.

The constable or, as the case may be, the local authority concerned, as soon as practicable after the making of a certificate, must serve a copy of it on the person against whom the closure order has been made and on the designated officer for the court which made the order, and must fix a copy of it in a conspicuous position on the premises⁶ in respect of which the order was made⁷. A copy of the certificate must also be served on any person who requests such a copy⁸.

1 As to closure orders see PARA 176.

2 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

3 As to the meaning of 'local authority' see PARA 174 note 6.

4 Criminal Justice and Police Act 2001 s 22(1). Where a closure order containing provision of the kind mentioned in s 21(2)(c) (see PARA 176 at head (c)) ceases to have effect by virtue of the making of a certificate under s 22(1), any sum paid into court by a defendant under the order must be released by the court: s 22(3). Subject to this, a closure order may include such provision as the court considers appropriate for dealing with any consequences which would arise if the order were to cease to have effect by virtue of the making of such a certificate: s 22(4).

5 Criminal Justice and Police Act 2001 s 22(2).

6 As to the meaning of 'premises' see PARA 174 note 2.

7 Criminal Justice and Police Act 2001 s 22(5) (amended by the Courts Act 2003 Sch 8 para 402).

8 Criminal Justice and Police Act 2001 s 22(6).

UPDATE

168-182 Closure of Premises

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

168-181 Closure under the Licensing Act 2003 ... Closure of premises for the unauthorised sale of alcohol

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(7) CLOSURE OF PREMISES/(ii) Closure of Premises Used for the Unauthorised Sale of Alcohol/179. Discharge of closure orders by the court.

179. Discharge of closure orders by the court.

Where a closure order¹ has been made (1) any person on whom the closure notice² concerned was served³; or (2) any person who has an interest in the premises⁴ in respect of which the closure order was made but on whom no closure notice was served, may make a complaint to a justice of the peace for an order that the closure order be discharged⁵. The court may not make such an order unless it is satisfied that the need for the closure order has ceased⁶.

1 As to closure orders see PARA 176.

2 As to closure notices see PARA 174.

3 Ie under the Criminal Justice and Police Act 2001 s 19: see PARA 174.

4 As to the construction of references to a person who has an interest in the premises see PARA 174 note 11.

5 Criminal Justice and Police Act 2001 s 23(1) (amended by SI 2005/886). Where a complaint has been made to a justice of the peace under s 23(1), the justice may issue a summons directed to such constable as he considers appropriate or (as the case may be) the local authority concerned requiring that person to appear before the magistrates' court to answer to the complaint: Criminal Justice and Police Act 2001 s 23(3). Where a summons is so served, a notice stating the date, time and place at which the complaint will be heard must be served on all persons on whom the closure notice concerned was served under s 19 (other than the complainant): s 23(4). As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq; and as to the meaning of 'local authority' see PARA 174 note 6.

The procedure on a complaint for the discharge of a closure order is (except as otherwise provided) in accordance with the Magistrates' Courts Act 1980: Criminal Justice and Police Act 2001 s 23(5). As to the hearing of complaints see **MAGISTRATES** vol 29(2) (Reissue) PARA 681 et seq. As to appeals against orders under s 23(12), or decisions not to make such orders, see PARA 180.

6 Criminal Justice and Police Act 2001 s 23(2).

UPDATE

168-182 Closure of Premises

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

168-181 Closure under the Licensing Act 2003 ... Closure of premises for the unauthorised sale of alcohol

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(7) CLOSURE OF PREMISES/(ii) Closure of Premises Used for the Unauthorised Sale of Alcohol/180. Appeals with regard to closure orders.

180. Appeals with regard to closure orders.

An appeal against a closure order¹, an order for the discharge of a closure order² or a decision not to make an order for the discharge of a closure order may be brought to the Crown Court at any time before the end of the period of 21 days beginning with the day on which the order or, as the case may be, the decision was made³. Such an appeal may be brought by any person on whom the closure notice⁴ concerned was served⁵ or by any person who has an interest in the premises⁶ in respect of which the closure order was made but on whom no closure notice was served⁷. On such an appeal the Crown Court may make such order as it considers appropriate⁸.

1 As to closure orders see PARA 176.

2 Ie under the Criminal Justice and Police Act 2001 s 23(1): see PARA 179.

3 Criminal Justice and Police Act 2001 s 24(1).

4 As to closure notices see PARA 174.

5 Ie under the Criminal Justice and Police Act 2001 s 19: see PARA 174.

6 As to the construction of references to a person who has an interest in the premises see PARA 174 note 11; and as to the meaning of 'premises' see PARA 175 note 2.

7 Criminal Justice and Police Act 2001 s 24(2).

8 Criminal Justice and Police Act 2001 s 24(3).

UPDATE

168-182 Closure of Premises

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

168-181 Closure under the Licensing Act 2003 ... Closure of premises for the unauthorised sale of alcohol

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(7) CLOSURE OF PREMISES/(ii) Closure of Premises Used for the Unauthorised Sale of Alcohol/181. Service of notices.

181. Service of notices.

Any document required or authorised by the provisions of the Criminal Justice and Police Act 2001 relating to the closure of premises¹ to be served on any person may be served:

- 625 (1) by delivering it to him or by leaving it at his proper address² or by sending it by post to him at that address;
- 626 (2) if the person is a body corporate other than a limited liability partnership, by serving it in accordance with head (1) above on the secretary of the body;
- 627 (3) if the person is a limited liability partnership, by serving it in accordance with head (1) above on a member of the partnership; or
- 628 (4) if the person is a partnership, by serving it in accordance with head (1) above on a partner or a person having the control or management of the partnership business³.

Where the address of the person on whom a document is to be served⁴ cannot be ascertained after reasonable inquiry, the document is taken to be duly served if a copy of it is fixed in a conspicuous position on the premises⁵ which are alleged to have been used for unauthorised sale of alcohol⁶. Where the name of the person on whom a document is to be served⁷ cannot be ascertained after reasonable inquiry, the document is taken to be duly served if it is served in accordance with the above provisions⁸ using an appropriate description for the person concerned⁹.

The provisions described above do not apply to any document if rules of court make provision about its service¹⁰.

1 le by virtue of the Criminal Justice and Police Act 2001 ss 19-26: see PARAS 174-177.

2 For these purposes and the purposes of the Interpretation Act 1978 s 7 (see **STATUTES** vol 44(1) (Reissue) PARA 1388) in its application to the Criminal Justice and Police Act 2001 s 27, the proper address of any person on whom a document is to be served is his last known address, except that: (1) in the case of service on a body corporate (other than a limited liability partnership) or its secretary, it is the address of the registered or principal office of the body; (2) in the case of service on a limited liability partnership or a member of the partnership, it is the address of the registered or principal office of the partnership; (3) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it is the address of the principal office of the partnership: s 27(2). For the purposes of s 27(2), the principal office of a company constituted under the law of a country or territory outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom: s 27(3). As to the meaning of 'United Kingdom' see PARA 16 note 8.

If a person to be served by another under ss 19-26 with any document has specified to that other an address within the United Kingdom other than his proper address (as determined under s 27(2)) as the one at which he or someone on his behalf will accept documents of the same description as that document, then, in relation to that document, that address is to be treated as his proper address for the purposes of s 27 and of the Interpretation Act 1978 s 7 in its application to the Criminal Justice and Police Act 2001 s 27, instead of that determined under s 27(2): s 27(4), (5).

3 Criminal Justice and Police Act 2001 s 27(1).

4 le under the Criminal Justice and Police Act 2001 ss 19-26.

5 As to the meaning of 'premises' see PARA 174 note 2.

6 Criminal Justice and Police Act 2001 s 27(6) (amended by the Licensing Act 2003 Sch 6 paras 119, 126(d)). As to the meanings of 'unauthorised sale of alcohol' and 'alcohol' see PARA 174 note 3.

7 See note 4.

8 le in accordance with the Criminal Justice and Police Act 2001 s 27: see the text and notes 1-7.

9 Criminal Justice and Police Act 2001 s 27(7).

10 Criminal Justice and Police Act 2001 s 27(8).

UPDATE

168-182 Closure of Premises

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

168-181 Closure under the Licensing Act 2003 ... Closure of premises for the unauthorised sale of alcohol

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(7) CLOSURE OF PREMISES/(iii) Closure of Noisy Premises/182. Powers to make closure orders.

(iii) Closure of Noisy Premises

182. Powers to make closure orders.

The chief executive officer¹ of the relevant local authority² may make a closure order³ in relation to premises if:

- 629 (1) a premises licence⁴ or temporary event notice⁵ has effect in respect of them; and
- 630 (2) he reasonably believes that a public nuisance is being caused by noise coming from the premises, and the closure of the premises is necessary to prevent that nuisance⁶.

A person commits an offence if without reasonable excuse he permits premises to be open in contravention of a closure order⁷.

Where a closure order is made in relation to premises, the chief executive officer of the relevant local authority must give notice of the order as soon as is reasonably practicable to the licensing authority⁸ for the area in which the premises are situated⁹. That chief executive officer may cancel the closure order by notice in writing to a manager of the premises¹⁰, and must cancel the order as soon as is reasonably practicable if he believes that it is no longer necessary in order to prevent a public nuisance being caused by noise coming from the premises¹¹.

As from a day to be appointed¹², a new power for a local authority or the police to apply to a magistrates' court for a closure order in respect of any premises associated with significant and persistent disorder or persistent serious nuisance to members of the public will be introduced¹³. Such closure orders are not limited to licensed premises¹⁴.

1 For these purposes, 'chief executive officer' of an authority means the head of the paid service of the authority designated under the Local Government and Housing Act 1989 s 4 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 427); Anti-social Behaviour Act 2003 s 41(3). The chief executive officer of a local authority may authorise an environmental health officer of the authority to exercise a power or duty of the chief executive officer under s 40(1) (see the text and notes 2-6) or under s 41(1) (see the text and notes 8-11); s 41(2). Such authority may be general or specific (s 41(2)(a)); and a reference in s 40(1) or s 41(1) to a belief of the chief executive officer includes a reference to a belief of a person so authorised (s 41(2)(b)). 'Environmental health officer' of an authority means an officer authorised by the authority for the purpose of exercising a statutory function in relation to pollution of the environment or harm to human health: s 41(3).

2 For these purposes, 'relevant local authority' in relation to premises means an authority which has statutory functions, for the area in which the premises are situated, in relation to minimising or preventing the risk of pollution of the environment or of harm to human health: Anti-social Behaviour Act 2003 s 41(3).

3 For these purposes, 'closure order' means an order which requires specified premises to be kept closed during a specified period which does not exceed 24 hours, and which begins when a manager of the premises receives written notice of the order: Anti-social Behaviour Act 2003 s 40(3). 'Manager' in relation to premises means (1) a person who holds a premises licence (see note 4) in respect of the premises; (2) a designated premises supervisor under a premises licence in respect of the premises; (3) the premises user in relation to a temporary event notice (see note 5) which has effect in respect of the premises; and (4) any other person who works at the premises in a capacity (paid or unpaid) which enables him to close them: s 41(3). As to the meaning of 'designated premises supervisor' see PARA 55 note 4; and as to the meaning of 'premises user' see

PARA 108 note 19 (both definitions are for the purposes of the Licensing Act 2003, and are not specifically applied for these purposes).

4 'Premises licence' has the same meaning as in the Licensing Act 2003 (see PARA 53 note 1): Anti-social Behaviour Act 2003 s 41(3).

5 'Temporary event notice' has the same meaning as in the Licensing Act 2003 (see PARA 108) and is to be treated as having effect in accordance with s 171(6) (see PARA 168 note 3): Anti-social Behaviour Act 2003 s 41(3) (definition amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 12, 13).

6 See the Anti-social Behaviour Act 2003 s 40(1), (2).

7 Anti-social Behaviour Act 2003 s 40(4). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding £20,000, or to both: s 40(5). As from a day to be appointed under the Criminal Justice Act 2003 s 336(3), the maximum term of imprisonment is increased to 51 weeks: see the Anti-social Behaviour Act 2003 s 40(5) (prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 59, as from such a day); at the date at which this volume states the law no such day had been appointed and that amendment was not in force.

8 For these purposes, 'licensing authority' has the same meaning as in the Licensing Act 2003: Anti-social Behaviour Act 2003 s 41(3). As to licensing authorities see PARA 3.

9 Anti-social Behaviour Act 2003 s 41(1)(c).

10 Anti-social Behaviour Act 2003 s 41(1)(a).

11 Anti-social Behaviour Act 2003 s 41(1)(b).

12 As from a day to be appointed under the Criminal Justice and Immigration Act 2008 s 153(7). At the date at which this volume states the law, no such day had been appointed.

13 See the Anti-social Behaviour Act 2003 Pt 1A (ss 11A-11L) (not yet in force; prospectively added by the Criminal Justice and Immigration Act 2008 Sch 20, as from a day to be appointed (see note 12)).

14 For the purposes of the Anti-social Behaviour Act 2003 Pt 1A, 'premises' includes any land or other place (whether enclosed or not), and any outbuildings which are or are used as part of premises: Anti-social Behaviour Act 2003 s 11L(13) (as added (see note 13); not in force).

UPDATE

168-182 Closure of Premises

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

182 Powers to make closure orders

TEXT AND NOTE 12--Appointed day is 1 December 2008: SI 2008/2993. See further **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(8) INNKEEPERS' DUTIES, RIGHTS AND LIABILITIES ATTACHING TO CERTAIN HOTEL PROPRIETORS/(i) Definitions/183. Meaning of 'inn' and 'hotel'.

(8) INNKEEPERS' DUTIES, RIGHTS AND LIABILITIES ATTACHING TO CERTAIN HOTEL PROPRIETORS

(i) Definitions

183. Meaning of 'inn' and 'hotel'.

A hotel within the meaning of the Hotel Proprietors Act 1956 is, and any other establishment is not, deemed to be an inn¹. 'Hotel' means² an establishment held out³ by the proprietor as offering food, drink⁴ and, if so required, sleeping accommodation, without special contract, to any traveller⁵ presenting himself who appears able and willing to pay a reasonable sum for the services and facilities provided⁶ and who is in a fit state to be received⁷.

1 Hotel Proprietors Act 1956 s 1(1).

2 This definition supersedes previous judicial statements defining an inn. Examples of these may be found in *Calye's Case* (1584) 8 Co Rep 32a; *Thompson v Lacy* (1820) 3 B & Ald 283 at 286 per Bayley J, and at 287 per Best J; *Allen v Smith* (1862) 12 CBNS 638 at 644 (affd (1863) 1 New Rep 404, Ex Ch); *Lamond v Richard* [1897] 1 QB 541 at 545, CA, per Lord Esher MR; *Orchard v Bush & Co* [1898] 2 QB 284 at 288 per Kennedy J. It seems that 'inn' is to be taken to mean 'common inn' (ie an inn at common law, open to receive any traveller who can properly be accommodated); see *Mason v Grafton* (1618) Hob 245 (but see *Parker v Flint* (1699) 12 Mod Rep 254); *Calye's Case* above. As to common inns see *Luton v Bigg* (1691) Skin 291, sub nom *Newton v Trigg* 1 Show 268; *Parker v Flint*; *Lane v Cotton* (1702) 12 Mod Rep 472 at 483 per Holt CJ; *Browne v Brandt* [1902] 1 KB 696 at 698 per Lord Alverstone CJ.

3 A sign is not essential to constitute an inn: see *Parker v Flint* (1699) 12 Mod Rep 254; *R v Collins* (1623) Palm 373.

4 In *Armstrong v Clark* [1957] 2 QB 391, [1957] 1 All ER 433, DC (a road traffic case), Lord Goddard CJ, quoting a dictum of Martin B, held that drink meant alcoholic drink, but the decision is not analogous, and a temperance hotel may be an inn: see *Cunningham v Philp* (1896) 12 TLR 352.

5 As to who is a traveller see PARA 189 note 3.

6 As to usages recognised among innkeepers regarding the hire of furniture etc see **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 686.

7 Hotel Proprietors Act 1956 s 1(3). As to the circumstances which entitle an innkeeper to refuse to receive a guest see PARA 192.

The definition of 'hotel', which is also the definition of an inn, still excludes those establishments formerly held at common law not to be inns, ie lodging houses (*Parker v Flint* (1699) 12 Mod Rep 254), boarding houses (*Dansey v Richardson* (1854) 3 E & B 144 at 159 per Coleridge J; and see *R v Jones* [1898] 1 QB 119) and public houses which are mere alehouses (*Pidgeon v Legge* (1857) 21 JP 743; *Sealey v Tandy* [1902] 1 KB 296 at 299, DC, per Darling J). In none of these instances is there an obligation to receive and entertain guests; cf PARA 186.

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184. Meaning of 'innkeeper'.

'Innkeeper' is not defined by statute, although the term is used in relation to the proprietor of a hotel to describe the capacity in which certain duties attach to such persons¹. At common law an innkeeper was a person who received travellers² and provided lodging and necessities for them and their attendants, and who employed people for this purpose and for the protection of travellers lodging in his inn and of their goods³.

Where the proprietor of a hotel is a company, and the hotel is carried on by means of a manager, the innkeeper is the company and not the manager, even though the licence for the sale of alcohol is in the name of the manager⁴.

All the duties, liabilities and rights which formerly⁵ attached to an innkeeper as such now attach to the proprietor of a hotel⁶ and to no other person⁷.

1 See the Hotel Proprietors Act 1956 s 1(2); and PARA 197.

2 As to who are travellers see PARA 189 note 3.

3 *Luton v Bigg* (1691) Skin 291, sub nom *Newton v Trigg* 1 Show 268.

4 *Dixon v Birch* (1873) LR 8 Exch 135.

5 Ie before 1 January 1957, when the Hotel Proprietors Act 1956 came into operation: s 3(4).

6 Ie as defined in the Hotel Proprietors Act 1956 s 1(3): see PARA 183.

7 Hotel Proprietors Act 1956 s 1(1), which is expressed to be subject to the provisions of that Act.

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(ii) Duties, Rights and Liabilities

A. INTRODUCTION

185. No liability on persons other than innkeepers.

The obligation to receive and entertain guests is confined to innkeepers¹, and no such obligation rests upon the keeper of any other establishment². A person who sells alcohol or other refreshments, but is not the proprietor of a hotel³, is entitled to refuse to serve persons whether they are travellers or not⁴.

The strict liability to answer for the loss of or damage to a guest's goods⁵ attaches only to innkeepers, that is, proprietors of hotels, and does not extend to proprietors of other establishments such as mere restaurants⁶. Nevertheless a lodging house keeper⁷ or boarding house keeper⁸ or a person who takes in someone as a lodger⁹ is liable for the loss of the lodger's or boarder's goods stolen by a stranger¹⁰ if there is negligence on the part of the keeper¹¹ or on the part of an employee for whose negligence in this respect the keeper is vicariously responsible.

1 As to innkeepers see PARA 184 text and notes 5-7.

2 The obligation of a hotel proprietor as an innkeeper may be compared with that of a common carrier. A similar kind of obligation to shoe a horse seems at one time to have attached to the trade of a blacksmith: see *Anon* (1502) Keil 50; *Lane v Cotton* (1702) 12 Mod Rep 472 at 484; *Parsons v Gingell* (1847) 4 CB 545 at 555 note (a); *Johnson v Midland Rly Co* (1849) 4 Exch 367 at 372-373.

3 As to the meaning of 'hotel' see PARA 183.

4 *R v Rymer* (1877) 2 QBD 136, CCR.

5 See PARA 197.

6 See *Ultzen v Nicols* [1894] 1 QB 92. A restaurant keeper may become liable as bailee for a guest's overcoat lost through the negligence of the restaurant keeper or his employees: *Ultzen v Nicols*.

7 *Scarborough v Cosgrove* [1905] 2 KB 805, CA.

8 *Dansey v Richardson* (1854) 3 E & B 144; *Scarborough v Cosgrove* [1905] 2 KB 805 at 813, CA; *Paterson v Norris* (1914) 30 TLR 393; *Caldecutt v Piesse* (1932) 49 TLR 26. See also *Edwards v West Herts Group Hospital Management Committee* [1957] 1 All ER 541, [1957] 1 WLR 415, CA.

9 *Calye's Case* (1584) 8 Co Rep 32a; *Barnholby v Wilkins* (1402) 2 Dyer 158b, n.

10 *Calye's Case* (1584) 8 Co Rep 32a; *Scarborough v Cosgrove* [1905] 2 KB 805, CA; and see *Olley v Marlborough Court Ltd* [1949] 1 KB 532, [1949] 1 All ER 127, CA.

11 *Dansey v Richardson* (1854) 3 E & B 144; *Scarborough v Cosgrove* [1905] 2 KB 805, CA; and see *Olley v Marlborough Court Ltd* [1949] 1 KB 532, [1949] 1 All ER 127, CA. A boarding house keeper is bound to use reasonable care for the protection of the guest's goods: *Paterson v Norris* (1914) 30 TLR 393; *Caldecutt v Piesse* (1932) 49 TLR 26. See generally **BAILMENT** vol 3(1) (2005 Reissue) PARA 39 et seq.

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B. RECEPTION AND ENTERTAINMENT OF GUESTS

186. Innkeeper's liability to receive guests.

An innkeeper, that is to say a hotel proprietor in his capacity as an innkeeper¹, is bound by the common law or custom of the realm² to receive³ and lodge⁴ in his inn⁵ all comers⁶ who are travellers⁷. Regardless of race⁸, sex⁹, religion or belief¹⁰, disability¹¹, sexual orientation¹² or gender reassignment¹³ (discrimination on those grounds being prohibited by statute, as is, in the case of a woman, discrimination on the grounds of pregnancy or maternity¹⁴) he is bound to entertain them¹⁵ at reasonable prices¹⁶ without any special¹⁷ or previous¹⁸ contract, unless he has some reasonable ground of refusal¹⁹. It seems that the offer of accommodation at another hotel does not discharge the liability²⁰. At common law an innkeeper who refused without lawful excuse to receive as a guest and lodge a traveller was formerly liable to prosecution on indictment²¹ but it is doubtful if such an indictment would now lie. It is, however, an offence under statute to encourage unlawful discrimination against a traveller²².

In addition to his obligation to receive and entertain travellers, a hotel proprietor as an innkeeper is bound to receive²³ a traveller's car, where facilities are available for it²⁴, and also all goods with which a person ordinarily travels²⁵, or which are his luggage²⁶, whether in fact belonging to the traveller or not²⁷. It seems that the innkeeper is bound to receive all goods brought with him by a traveller, unless there is some reason to the contrary in the exceptional character of the things brought²⁸. Thus if the innkeeper has an outhouse in which to accommodate it suitably, he is probably bound to receive a guest's dog, and, failing such accommodation, the guest may be entitled to bring the dog into the inn, but he cannot insist on bringing it into any common part of the inn²⁹.

1 As to innkeepers see PARA 184 text and notes 5-7.

2 *White's Case* (1558) 2 Dyer 158b; *Warbrooke v Griffin* (1609) 2 Brownl 254; *Dansey v Richardson* (1854) 3 E & B 144 at 159 per Coleridge J; *Medawar v Grand Hotel Co* [1891] 2 QB 11 at 19, CA, per Lord Esher MR; *Robins & Co v Gray* [1895] 2 QB 501 at 503, CA, per Lord Esher MR; *Lamond v Richard* [1897] 1 QB 541 at 545, CA, per Lord Esher MR; and see *Rothfield v North British Rly Co* 1920 SC 805.

3 *Lane v Cotton* (1702) 12 Mod Rep 472 at 483 per Lord Holt CJ; *York v Grindstone (Grenaugh)* (1703) 2 Ld Raym 866 at 867; *Kirkman v Shawcross* (1794) 6 Term Rep 14 at 17; *Thompson v Lacy* (1820) 3 B & Ald 283 at 287 per Bayley J; *R v Ivens* (1835) 7 C & P 213; *Scarfe v Morgan* (1838) 4 M & W 270 at 275; *Hawthorne v Hammond* (1844) 1 Car & Kir 404; *Dansey v Richardson* (1854) 3 E & B 144 at 159 per Coleridge J; *Robins & Co v Gray* [1895] 2 QB 501 at 504, CA, per Lord Esher MR; and see *R v Rymer* (1877) 2 QBD 136, CCR; *Gordon v Silber* (1890) 25 QBD 491; 1 Hawk PC (8th Edn) 714.

4 *Anon* (1502) Keil 50; *Anon* (1460) YB 39 Hen 6, fo 18, pl 24, cited Bro Abr, Action sur le case, pl 76, per Moyle J; *Anon* (1623) 2 Roll Rep 345; *Luton v Bigg* (1691) Skin 291, sub nom *Newton v Trigg* (1691) 1 Show 268 per Eyres J; *Burgess v Clements* (1815) 4 M & S 306; *Thompson v Lacy* (1820) 3 B & Ald 283 at 287; *R v Ivens* (1835) 7 C & P 213 at 216 per Coleridge J; *R v Rymer* (1877) 2 QBD 136, CCR; *Lamond v Richard* [1897] 1 QB 541 at 545, CA, per Lord Esher MR; 1 Hawk PC (8th Edn) 714.

5 As to inns see PARA 183.

6 *Luton v Bigg* (1691) Skin 291, sub nom *Newton v Trigg* (1691) 1 Show 268 per Eyres J; *Lane v Cotton* (1702) 12 Mod Rep 472 at 483 per Lord Holt CJ; *Kirkman v Shawcross* (1794) 6 Term Rep 14 at 17 per Lord Kenyon CJ; *R v Ivens* (1835) 7 C & P 213 at 219 per Coleridge J; *Hawthorne v Hammond* (1844) 1 Car & Kir 404

at 407 per Parke B; *Johnson v Midland Rly Co* (1849) 4 Exch 367 at 372-373 per Parke B; *Browne v Brandt* [1902] 1 KB 696 at 698 per Lord Alverstone CJ. It is submitted that this includes children accompanied by adults.

7 *Grimston v Innkeeper* (1627) Het 49; *Luton v Bigg* (1691) Skin 291, sub nom *Newton v Trigg* (1691) 1 Show 268 at 269 per Holt CJ; *R v Luellin* (1701) 12 Mod Rep 445; *R v Rymer* (1877) 2 QBD 136, CCR; *Lamond v Richard* [1897] 1 QB 541 at 545, CA, per Lord Esher MR; *Sealey v Tandy* [1902] 1 KB 296. See further PARA 189 note 3.

8 *Constantine v Imperial Hotels Ltd* [1944] 1 KB 693, [1944] 2 All ER 171; Race Relations Act 1976 s 20(1), (2)(b), (e): see PARAS 192-193; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 461. Note that the duty not to discriminate applies also to keepers of boarding houses and similar establishments: s 20(2)(b).

9 Sex Discrimination Act 1975 ss 2(1), 29(1), (2)(b), (e): see PARAS 192-193; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 382. Note that the duty not to discriminate applies also to keepers of boarding houses and similar establishments: s 29(2)(b).

10 Equality Act 2006 s 46(1), (2)(b), (d): see PARAS 192-193; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 693. Note that the duty not to discriminate applies also to keepers of boarding houses and similar establishments: s 46(2)(b).

11 Disability Discrimination Act 1995 ss 19(1), (3)(d), (f), 20: see PARAS 192-193; and **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 582-583. Note that the duty not to discriminate applies also to keepers of boarding houses and similar establishments: s 19(3)(d).

12 Equality Act 2006 s 81; Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 4(1), (2)(b), (d); see PARAS 192-193; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 753. Note that the duty not to discriminate applies also to keepers of boarding houses and similar establishments: reg 4(2)(b).

13 Sex Discrimination Act 1975 ss 2A, 29(1), (2)(b), (e) (s 2A added by SI 1999/1102; amended by SI 2008/963); see PARAS 192-193; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 348. Note that the duty not to discriminate applies also to keepers of boarding houses and similar establishments: s 29(2)(b). For exceptions for the provision of accommodation (not normally provided on a commercial basis) at a place (permanently or for the time being) occupied or used for the purposes of an organised religion see the Sex Discrimination Act 1975 s 35ZA(c) (added by SI 2008/963).

14 Sex Discrimination Act 1975 ss 3B, 29(1), (2)(b), (e) (s 3B added by SI 2008/963): see PARAS 192-193; and **DISCRIMINATION**. Note that the duty not to discriminate applies also to keepers of boarding houses and similar establishments: s 29(2)(b).

15 *Parker v Flint* (1699) 12 Mod Rep 254; *Thompson v Lacy* (1820) 3 B & Ald 283 at 287; *R v Rymer* (1877) 2 QBD 136, CCR; *Gordon v Silber* (1890) 25 QBD 491; and see *Luton v Bigg* (1691) Skin 291, sub nom *Newton v Trigg* (1691) 1 Show 268 at 269 per Holt CJ; 1 Hawk PC (8th Edn) 714.

16 *Crisp v Pratt* (1639) Cro Car 549; *Parker v Flint* (1699) 12 Mod Rep 254; *Kirkman v Shawcross* (1794) 6 Term Rep 14 at 17 per Lord Kenyon CJ; *Thompson v Lacy* (1820) 3 B & Ald 283.

17 *Saunders v Plummer* (1662) O Bridg 223; *Thompson v Lacy* (1820) 3 B & Ald 283.

18 *Parker v Flint* (1699) 12 Mod Rep 254.

19 *White's Case* (1558) 2 Dyer 158b; *Bennett v Mellor* (1793) 5 Term Rep 273 at 276 per Grosse J, cited in note to *York v Grindstone (Grenough)* (1703) 1 Salk (6th Edn) 388; *Pidgeon v Legge* (1857) 21 JP 743 at 744 per Bramwell B; *Gordon v Silber* (1890) 25 QBD 491; *Medawar v Grand Hotel Co* [1891] 2 QB 11 at 20, CA, per Lord Esher MR; *Browne v Brandt* [1902] 1 KB 696; and see *Lovett v Hobbs* (1680) 2 Show 127. As to what is a reasonable ground for refusal see PARAS 192-193.

20 *Constantine v Imperial Hotels Ltd* [1944] KB 693, [1944] 2 All ER 171.

21 See eg *R v Ivens* (1835) 7 C & P 213 (where the form is set out); *R v Rymer* (1877) 2 QBD 136, CCR (indictment at sessions); 1 Hawk PC (8th Edn) 714; and see *R v Luellin* (1701) 12 Mod Rep 445; *R v Sprague* (1899) 63 JP 233; *R v Smith* (1901) 65 JP 521. For a more modern example of such proceedings see *R v Higgins* [1948] 1 KB 165, [1947] 2 All ER 619, CCA, where, however, the statement at 171 and at 621 that people living in the immediate neighbourhood of the inn could not be travellers must be taken to be incorrect in view of *Williams v Linnitt* [1951] 1 KB 565, [1951] 1 All ER 278, CA.

22 See PARA 210.

23 *Saunders v Plummer* (1662) O Bridg 223; *Scarfe v Morgan* (1838) 4 M & W 270 at 275; *Mulliner v Florence* (1878) 3 QBD 484 at 493, CA, per Cotton LJ.

24 *Turrill v Crawley* (1849) 13 QB 197 at 202 per Coleridge J; *Mulliner v Florence* (1878) 3 QBD 484 at 493 per Cotton LJ. 'Carriage' includes motor car: cf *Chesham Automobile Supply Ltd v Beresford Hotel (Birchington) Ltd* (1913) 29 TLR 584; and see *Gresham v Lyon* [1954] 2 All ER 786, [1954] 1 WLR 1100. An innkeeper is also bound to receive in the inn's stables, if he has room for it (see PARA 207), a traveller's horse, and to feed it: see *Stanyon v Davis* (1704) 6 Mod Rep 223; *Scarfe v Morgan* (1838) 4 M & W 270 at 275; and see the indictment in *R v Ivens* (1835) 7 C & P 213. Where, however, there are no stables at the inn (as in *Thompson v Lacy* (1820) 3 B & Ald 283), it seems that the innkeeper is not bound to receive a traveller's horse, any more than he would be bound to receive it if he had such stables and they were full.

25 *Broadwood v Granara* (1854) 10 Exch 417 at 423 per Parke B; *Gordon v Silber* (1890) 25 QBD 491.

26 *Robins & Co v Gray* [1895] 2 QB 501 at 504, CA, per Lord Esher MR.

27 *Robins & Co v Gray* [1895] 2 QB 501 at 504, CA.

28 *Robins & Co v Gray* [1895] 2 QB 501 at 504, CA, per Lord Esher MR; *Threfall v Borwick* (1875) LR 10 QB 210 at 212, Ex Ch, per Lord Coleridge CJ; *Broadwood v Granara* (1854) 10 Exch 417 at 423 per Parke B.

29 *R v Rymer* (1877) 2 QBD 136 at 140 per Kelly CB; and see at 141 per Manisty J. Insistence by the traveller on entering with a dangerous or unclean dog might, however, provide grounds for refusing to accept him as a guest: *R v Rymer*; and see *Robins & Co v Gray* [1895] 2 QB 501 at 504, CA, per Lord Esher MR, where, in excluding 'a tiger or a package of dynamite' as luggage of an exceptional character, he does not exclude animals as such. It seems that refusal to allow admittance to a guide dog would not necessarily amount to unlawful discrimination under the Disability Discrimination Act 1995 against a blind person: see *Lewisham London Borough Council v Malcolm* [2008] UKHL 43 at [35]-[36], [2008] LGR 549 at [35]-[36], 102 BMLR 170 obiter per Lord Scott of Foscote. Admitting any animal (other than a guide dog) to 'food premises' may be in contravention of relevant food hygiene regulations. See generally **FOOD**.

UPDATE

186-187 Innkeeper's liability to receive guests, Innkeeper's right to demand payment in advance

Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

186 Innkeeper's liability to receive guests

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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187. Innkeeper's right to demand payment in advance.

A hotel proprietor, as an innkeeper¹, is not bound to trust his guest for payment, and may therefore demand payment of a reasonable sum in advance². If a traveller wishes to insist upon his right to be received he must tender a reasonable sum unless the circumstances are such that the question of credit is not a matter weighing with the innkeeper³.

1 As to innkeepers see PARA 184 text and notes 5-7.

2 *Anon* (1460) YB 39 Hen 6, of 18, pl 24, cited Bro Abr, Action sur le case, pl 76, per Danby J; *A-G v Capel* (1494) YB 10 Hen 7, fo 7 at fo 8 per Hussey CJ; *Pinchon's Case* (1611) 9 Co Rep 86b at 87b; *Mulliner v Florence* (1878) 3 QBD 484 at 488, CA, per Bramwell LJ; and see *Thompson v Lacy* (1820) 3 B & Ald 283 at 287 per Bayley J.

3 *R v Ivens* (1835) 7 C & P 213. See also *Fell v Knight* (1841) 8 M & W 269 at 276. As to the offence of obtaining services (eg accommodation or refreshment) dishonestly see the Fraud Act 2006 s 11; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

UPDATE

186-187 Innkeeper's liability to receive guests, Innkeeper's right to demand payment in advance

Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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188. Trespass in an inn.

As the law gives a right to enter an inn¹, a person who enters it and commits a trespass, such as carrying away anything, is a trespasser from the beginning, but no act of omission can be a trespass, and therefore a refusal to pay for food or drink supplied there cannot make a guest a trespasser².

1 I.e. a hotel as defined in PARA 183.

2 *Six Carpenters' Case* (1610) 8 Co Rep 146a, which was decided at a time when the distinction between an inn and a mere tavern was not clearly recognised, any more than the distinction between a traveller and a guest who was not a traveller. See also PARA 187 text to note 2.

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189. No liability to receive other than travellers.

A hotel proprietor, as an innkeeper¹, is not bound to receive or provide for anyone who is not a traveller². Whether a person is a traveller seems to be a question of fact in each case, although it is clear that the length of the journey provides no test by itself³.

Whether the capacity in which a person goes to an inn is that of a traveller is also a question of fact⁴, and if a person who has gone to an inn as a traveller stays there for a considerable period, it is a further question of fact how long he retains the character of a traveller so that the innkeeper is bound to allow him to remain⁵. Mere length of stay is not conclusive, but is one of the circumstances to be taken into consideration⁶. If a guest has ceased to be a traveller and has become a mere lodger or boarder, the innkeeper may refuse to lodge or entertain him any longer and may turn him out after reasonable notice⁷.

1 As to innkeepers see PARA 184 text and notes 5-7.

2 *R v Luellin* (1701) 12 Mod Rep 445; *Sealey v Tandy* [1902] 1 KB 296. The custom of England does not extend to persons who are in an inn as lodgers or boarders: *Lamond v Richard* [1897] 1 QB 541 at 548, CA, per Chitty LJ.

3 'Traveller' is not defined in the Hotel Proprietors Act 1956, but it is clear that a local resident coming for temporary refreshment is a traveller: see *Williams v Linnitt* [1951] 1 KB 565 at 575, [1951] 1 All ER 278 at 283, CA, per Lord Tucker, approving *Orchard v Bush & Co* [1898] 2 QB 284 at 289 per Kennedy J. Dicta to the contrary in *R v Rymer* (1877) 2 QBD 136, CCR; *Pidgeon v Legge* (1857) 29 LTOS 166; and *R v Higgins* [1948] 1 KB 165, [1947] 2 All ER 619, CCA, must be taken to be incorrect. Although a local resident who calls at an inn for refreshment may be a traveller for the purpose of being received and entertained, he is not such a traveller as to make the innkeeper liable for the loss of or damage to his goods without proof of negligence on the innkeeper's part: see the Hotel Proprietors Act 1956 s 2(1); and PARA 199.

4 *Lamond v Richard* [1897] 1 QB 541 at 545, CA, per Lord Esher MR.

5 *Lamond v Richard* [1897] 1 QB 541 at 546, CA, per Lord Esher MR.

6 *Lamond v Richard* [1897] 1 QB 541 at 546, CA, per Lord Esher MR. 'According to the old law a traveller was so called the first day, because it is not known why he comes; the second day he is called a hogen hinde; and the third day a menial servant; and according to the aforesaid articles an innkeeper was responsible for him, as his servant, in the leet': *Gulielm's Case* (1625) Lat 88 per Doderidge J. In *Harland's Case* (1641) Clay 97, it was ruled that *Calye's Case* (1584) 8 Co Rep 32a is not law in limiting a guest to three days, and it was held that soldiers who had been 14 days at an inn were guests. In *Chesham Automobile Supply Ltd v Beresford Hotel (Birchington) Ltd* (1913) 29 TLR 584, a guest at a hotel was held to be a traveller, although he had stayed at the hotel for a long period on inclusive terms. See, however, to the contrary, *Ford v Seligman* [1954] OR 957, [1955] 1 DLR 796, Ont CA (person staying for more than five months on special terms is a lodger and not a guest). See also PARA 201 text and note 6.

7 See PARA 201.

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190. No liability to receive traveller's goods alone.

A hotel proprietor, as an innkeeper¹, is not bound to receive a traveller's goods where the traveller does not want lodging or entertainment for himself at the inn, although the rule was apparently different with regard to a traveller's horse².

1 As to innkeepers see PARA 184 text and notes 5-7.

2 *York v Grindstone (Grenaugh)* (1703) 1 Salk (6th Edn) 388, where the majority of the court held that the plaintiff was a guest by leaving his horse, although he never went into the inn himself, as much as if he had stayed himself, but said that it would have been otherwise if he had left a trunk or dead thing; *Lane v Cotton* (1702) 12 Mod Rep 472 at 480; cf *Smith v Dearlove* (1848) 6 CB 132. It seems clear that the possible exception to the rule could not include a traveller's car.

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191. No right to particular room or accommodation.

A hotel proprietor, as an innkeeper¹, is only bound to supply such reasonable and proper accommodation for his guest and his goods as he in fact possesses²; but this is subject to the statutory duty to make reasonable adjustments to the physical features of the hotel in order to accommodate persons with a disability³. Although entitled to reasonable and proper accommodation, a traveller is not entitled to insist on a particular apartment⁴, and if a guest annoys other guests in a particular room and refuses the innkeeper's request to leave that room, the innkeeper may use such force as is necessary to remove him from it⁵.

Smoking may be permitted in designated bedrooms⁶ in hotels⁷; but it seems that a guest has no common law (as opposed to contractual) right to insist on being accommodated in a bedroom which has been designated for that purpose.

An innkeeper is not bound to find showrooms for his guest, but only convenient lodging rooms and lodging⁸. He is not bound to supply clothes or wearing apparel⁹.

1 As to innkeepers see PARA 184 text and notes 5-7.

2 *Winkworth v Raven* [1931] 1 KB 652, where an innkeeper was not bound to provide a frostproof garage for the accommodation of his guests' cars. It is submitted that the reasonableness of the accommodation provided or offered is a question of fact in each case.

3 See the Disability Discrimination Act 1995 s 21; the Disability Discrimination (Service Providers and Public Authorities Carrying Out Functions) Regulations 2005, SI 2005/2901, Pt 3 (regs 9-11); and **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 586-587.

4 *Fell v Knight* (1841) 8 M & W 269, where the traveller wished to sit up all night and claimed to have a room upstairs for that purpose, and the innkeeper offered him one downstairs; *Scrivenor v Reed* (1858) 6 WR 603.

5 *Scrivenor v Reed* (1858) 6 WR 603.

6 'A designated bedroom' means a room which (1) is set apart exclusively for sleeping accommodation; (2) has been designated in writing by the person having the charge of the premises in which the room is situated as being a room in which smoking is permitted; (3) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls; (4) does not have a ventilation system that ventilates into any other part of the premises (except any other designated bedrooms); (5) does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and (6) is clearly marked as a bedroom in which smoking is permitted: Smoke-free (Exemptions and Vehicles) Regulations 2007, SI 2007/765, reg 4(2). For these purposes, 'bedroom' does not include any dormitory or other room that a person in charge of premises makes available under separate arrangements for persons to share at the same time: reg 4(3). These definitions apply in England only: reg 1(2). For equivalent definitions applying in Wales see the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787, reg 3(5).

7 See the Smoke-free (Exemptions and Vehicles) Regulations 2007, SI 2007/765, reg 4(1); the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787, reg 3(4)(c).

8 *Burgess v Clements* (1815) 4 M & S 306 at 310 per Lord Ellenborough CJ.

9 See *Anon* (1619) 2 Roll Rep 79; Bac Abr, Inns and Innkeepers (C).

UPDATE

191-193 No right to particular room or accommodation ... Innkeeper's right to refuse refreshment

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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192. Innkeeper's right to refuse accommodation.

The fact that his inn's bedroom accommodation is occupied is a reasonable ground for an innkeeper's refusal to receive a traveller¹ for a night's accommodation². Nor is he in those circumstances bound to permit the traveller to occupy a public room for the night³. The drunkenness or other objectionable condition of the traveller would also be a reasonable ground for refusal of accommodation⁴.

The arrival of a traveller at a late hour⁵, however, or upon a Sunday⁶, or the fact that he wishes to sit up all night⁷, is not a sufficient ground for refusing to receive him.

A traveller's refusal to inform the innkeeper of his name and address has been held not to be of itself a sufficient ground for refusing to admit him⁸, although it is now the duty of the keeper of any premises where lodging or sleeping accommodation is provided for reward to require any person aged 16 or over who stays at the premises to give particulars as to his full name and nationality and, in the case of an alien, also to give particulars of his registration certificate or passport, and of his next destination and, if it is known to him, of his address there⁹.

It is unlawful for any person concerned with the provision of accommodation in a hotel, boarding house or other similar establishment to the public or a section of the public to discriminate against a person on the grounds of:

- 631 (1) colour, race, nationality, ethnic or national origin¹⁰;
- 632 (2) sex¹¹;
- 633 (3) gender reassignment¹²;
- 634 (4) pregnancy or maternity, in the case of a woman¹³;
- 635 (5) religion or belief¹⁴;
- 636 (6) disability in the form of physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities¹⁵; or
- 637 (7) sexual orientation, including a sexual orientation which he is thought to have¹⁶,

by refusing such accommodation¹⁷ or by refusing to provide accommodation of the like quality, in the like manner and on the like terms as are normal in the provider's case in relation to other members of the public¹⁸. There is a statutory duty to make reasonable adjustments to the physical features of the establishment in order to accommodate persons with a disability¹⁹.

1 As to who is a traveller see PARA 189 note 3.

2 *Lane v Cotton* (1702) 12 Mod Rep 472 at 484; *Gordon v Silber* (1890) 25 QBD 491 at 492; *Medawar v Grand Hotel Co* [1891] 2 QB 11 at 20, CA, per Lord Esher MR; *Browne v Brandt* [1902] 1 KB 696; and see *White's Case* (1558) 2 Dyer 158b.

3 *Browne v Brandt* [1902] 1 KB 696.

4 See PARA 193 text and notes 1-4; but as to illness see PARA 194. As to the duty of an innkeeper who has accommodated a guest suffering from a notifiable disease to disinfect the guest's room see PARA 211.

5 *R v Ivens* (1835) 7 C & P 213.

6 See note 5.

7 *Fell v Knight* (1841) 8 M & W 269 at 273 per Alderson B; but cf *Browne v Brandt* [1902] 1 KB 696 at 699 per Darling J.

8 *R v Ivens* (1835) 7 C & P 213.

9 Immigration (Hotel Records) Order 1972, SI 1972/1689, art 4. Such statements must be kept by the innkeeper for a period of at least 12 months: art 5(b). There is strangely no requirement that the passport or other document should be produced for inspection.

10 See the Race Relations Act 1976 ss 1(1), 3(1). Segregating a person from other persons on these grounds ranks as discrimination: s 1(2). See further **DISCRIMINATION** vol 13 (2007 Reissue) PARA 439 et seq.

11 See the Sex Discrimination Act 1975 ss 1(1), 2(1) (s 1(1) substituted by SI 2001/2660); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 344 et seq. For exceptions where a person would be likely to be seriously embarrassed by or might reasonably object to the presence of a person of the other sex see s 35(1) (c); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 383. For exceptions for communal accommodation see s 46; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 398.

12 See the Sex Discrimination Act 1975 s 2A (added by SI 1999/1102; amended by SI 2008/963); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 348. For exceptions for the provision of accommodation (not normally provided on a commercial basis) at a place (permanently or for the time being) occupied or used for the purposes of an organised religion see the Sex Discrimination Act 1975 s 35ZA(c) (added by SI 2008/963).

13 See the Sex Discrimination Act 1975 s 3B (added by SI 2008/963).

14 See the Equality Act 2006 s 44; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 691.

15 See the Disability Discrimination Act 1995 s 1(1); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 511 et seq. See also PARA 186 note 29.

16 See the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 3; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 753.

17 Sex Discrimination Act 1975 s 29(1)(a), (2)(b); Race Relations Act 1976 s 20(1)(a), (2)(b); Equality Act 2006 s 46(1)(a), (2)(b); Disability Discrimination Act 1995 ss 19(1)(a), (3)(d), 20; Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 4(1)(a), (2)(b).

See also *Constantine v Imperial Hotels Ltd* [1944] 1 KB 693, [1944] 2 All ER 171.

18 Sex Discrimination Act 1975 s 29(1)(b); Race Relations Act 1976 s 20(1)(b); Equality Act 2006 s 46(1)(b)-(d); Disability Discrimination Act 1995 ss 19(1)(b)-(d), 20; Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 4(1)(b)-(d).

19 See the Disability Discrimination Act 1995 s 21; the Disability Discrimination (Service Providers and Public Authorities Carrying Out Functions) Regulations 2005, SI 2005/2901, Pt 3 (regs 9-11); and **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 586-587.

UPDATE

191-193 No right to particular room or accommodation ... Innkeeper's right to refuse refreshment

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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193. Innkeeper's right to refuse refreshment.

The fact that a traveller insists upon bringing a dog with him into an inn may be a reasonable ground for an innkeeper refusing to provide him with refreshment if the dog is likely to be either dangerous or unclean¹; and it has been held to be a sufficient reason to refuse to receive a traveller that he is drunk or behaves improperly², or is unsuitably dressed³, or is of bad character, or otherwise not in a fit condition to be received⁴. An innkeeper is not bound to send out for food, and he may reserve food for other meals for expected guests and may properly reserve tables for guests who have booked⁵.

It is unlawful for any person concerned with the provision of refreshment facilities to the public or a section of the public to discriminate against a person on the grounds of:

- 638 (1) colour, race, nationality, ethnic or national origin⁶;
- 639 (2) sex⁷;
- 640 (3) gender reassignment⁸;
- 641 (4) pregnancy or maternity, in the case of a woman⁹;
- 642 (5) religion or belief¹⁰;
- 643 (6) disability in the form of physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities¹¹; or
- 644 (7) sexual orientation, including a sexual orientation which he is thought to have¹²,

by refusing those facilities¹³ or by refusing to provide them of the like quality, in the like manner and on the like terms as are normal in the provider's case in relation to other members of the public¹⁴.

1 *R v Rymer* (1877) 2 QBD 136, CCR. As to dogs see PARA 186 text and note 29.

2 *R v Ivens* (1835) 7 C & P 213; *Hawthorne v Hammond* (1844) 1 Car & Kir 404 at 407 per Parke B; *Thompson v McKenzie* [1908] 1 KB 905 at 907. As to the statutory right of the holder of a premises licence and certain other persons to eject a person from licensed premises see PARA 138.

3 *Pidgeon v Legge* (1857) 21 JP 743 (chimney sweep in working clothes); cf *R v Sprague* (1899) 63 JP 233.

4 *Rothfield v North British Rly Co* 1920 SC 805 (moneylender whose previous behaviour had caused complaints). A refusal to serve a traveller because he insists on wearing his top coat at table has been held in the Republic of Ireland to be a refusal without reasonable excuse: see 104 Sol Jo 38.

5 *R v Higgins* [1948] 1 KB 165, [1947] 2 All ER 619, CCA. The question whether the refusal to supply food and lodging was reasonable in the circumstances is one of fact: *R v Higgins*. The statement in *R v Higgins* at 171 and at 621 that people in the immediate neighbourhood of the inn could not be travellers must be taken to be incorrect in view of *Williams v Linnitt* [1951] 1 KB 565, [1951] 1 All ER 278, CA. See PARA 189 note 3.

6 See the Race Relations Act 1976 ss 1(1), 3(1). Segregating a person from other persons on these grounds ranks as discrimination: s 1(2). See further **DISCRIMINATION** vol 13 (2007 Reissue) PARA 439 et seq.

7 See the Sex Discrimination Act 1975 ss 1(1), 2(1) (s 1(1) substituted by SI 2001/2660); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 344 et seq.

8 See the Sex Discrimination Act 1975 s 2A (added by SI 1999/1102; amended by SI 2008/963); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 348.

9 See the Sex Discrimination Act 1975 s 3B (added by SI 2008/963).

10 See the Equality Act 2006 s 44; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 691.

11 See the Disability Discrimination Act 1995 s 1(1); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 511 et seq.

12 See the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 3; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 753.

13 Sex Discrimination Act 1975 s 29(1)(a), (2)(e); Race Relations Act 1976 s 20(1)(a), (2)(e); Equality Act 2006 s 46(1)(a), (2)(d); Disability Discrimination Act 1995 ss 19(1)(a), (3)(f), 20; Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 4(1)(a), (2)(d).

A complaint of racial discrimination may be brought by a barmaid against her employer if she is dismissed for refusing to obey an order not to serve ethnic minority customers: *Zarczyńska v Levy* [1979] 1 All ER 814, [1979] 1 WLR 125, EAT; followed in *Showboat Entertainment Centre Ltd v Owens* [1984] 1 All ER 836, [1984] 1 WLR 384, EAT (manager of amusement centre dismissed because of his refusal to carry out a racially discriminatory instruction to exclude young black people).

14 Sex Discrimination Act 1975 s 29(1)(b); Race Relations Act 1976 s 20(1)(b); Equality Act 2006 s 46(1)(b)-(d); Disability Discrimination Act 1995 ss 19(1)(b)-(d), 20; Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 4(1)(b)-(d).

As to the statutory duty to make reasonable adjustments to the physical features of the hotel in order to accommodate persons with a disability see PARA 192 text and note 19.

UPDATE

191-193 No right to particular room or accommodation ... Innkeeper's right to refuse refreshment

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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194. Traveller's illness.

The illness of a traveller does not appear to be a sufficient ground for refusing to receive him¹; but a justice of the peace may in certain circumstances order a person who is suffering from a notifiable disease² to be removed to a suitable hospital³. Any person who, knowing that he is suffering from a notifiable disease, exposes other persons to the risk of infection by his presence or conduct in, among other places, a hotel, or, having the care of a person whom he knows to be so suffering, causes or permits that person so to expose others in any such place, is liable to a penalty not exceeding level 1 on the standard scale⁴.

1 See *R v Luellin* (1701) 12 Mod Rep 445.

2 I.e. cholera, plague, relapsing fever, smallpox or typhus: Public Health (Control of Disease) Act 1984 s 10.

3 See the Public Health (Control of Disease) Act 1984 s 37 (amended by the National Health Service and Community Care Act 1990 Sch 9 para 26(2), Sch 10; the Health and Social Care (Community Health and Standards) Act 2003 Sch 4 paras 60, 62; SI 2000/90, (4); SI 2002/2469; SI 2007/961); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 916.

4 See the Public Health (Control of Disease) Act 1984 s 17. As to the standard scale see PARA 17 note 21. Letting an infected room is an offence: see PARA 211.

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C. SAFETY OF GUESTS

195. Innkeeper's liability for personal safety.

It is a hotel proprietor's duty¹, as an innkeeper², to take reasonable care of the persons of his guests so that they are not injured by anything happening to them through his negligence while they are his guests³. No absolute liability to insure the personal safety of his guests is, however, imposed on him such as exists with respect to the safety of their goods⁴, so that if a guest is attacked in an inn the innkeeper is not liable⁵. There is, however, an implied warranty by the innkeeper that, for the purpose of personal use by the guest, the inn premises are as safe as reasonable care and skill on the part of anyone can make them⁶. Failure to keep a passage lit at a reasonable hour when guests might reasonably be expected to be using it is negligence and a breach of duty⁷.

For this purpose a guest is one who goes upon business which concerns the innkeeper as an innkeeper and upon his invitation, express or implied, and does not include persons who go as mere volunteers, or personal guests of the innkeeper, or employees, or persons whose employment is such that danger may be considered to be bargained for⁸. The distinction is between someone who goes to the inn as a member of the public for the purpose of using the accommodation which the inn offers to the public and someone who goes to the inn in some other capacity⁹.

Thus an innkeeper's personal guest has been held to have no cause of action as a hotel guest when injured in opening a door which has been left in a dangerous condition¹⁰.

1 The duty owed by occupiers of premises to their visitors, ie the persons who would formerly at common law be treated as their invitees or licensees, is the common duty of care as defined in the Occupiers' Liability Act 1957 s 2(2), except so far as that duty may be modified by agreement or otherwise: see ss 1, 2, 8(3). As to the duty owed by an occupier to someone other than a visitor see the Occupiers' Liability Act 1984. See further **NEGLIGENCE** vol 78 (2010) PARA 29 et seq.

2 As to innkeepers see PARA 184 text and notes 5-7.

3 *Sandys v Florence* (1878) 47 LJQB 598 at 600 per Lindley J; *Indermaur v Dames* (1866) 35 LJCP 184 at 189 per Willes J. As to negligence generally see **NEGLIGENCE**.

4 As to the liability of an innkeeper with respect to the goods of travellers who have sleeping accommodation see PARA 197.

5 *Calye's Case* (1584) 8 Co Rep 32a; *Sandy v Florence* (1878) 47 LJQB 598 at 600 per Lindley J; *Macleanan v Segar* [1917] 2 KB 325 at 328 per McCardie J; *Winkworth v Raven* [1931] 1 KB 652 at 657 per Swift J; and cf *Readhead v Midland Rly Co* (1869) LR 4 QB 379 at 382, 386, Ex Ch.

6 *Macleanan v Segar* [1917] 2 KB 325; but cf *Bell v Travco Hotels Ltd* [1953] 1 QB 473, [1953] 1 All ER 638, CA, where it was held that this test did not apply to a slippery path on the hotel premises but some distance from the hotel itself. As to the statutory duty of care imposed by the Occupiers' Liability Act 1957 see s 2(2).

7 *Campbell v Shelbourne Hotel Ltd* [1939] 2 KB 534, [1939] 2 All ER 351.

8 *Indermaur v Dames* (1866) 35 LJCP 184 at 190.

9 *Indermaur v Dames* (1866) 35 LJCP 184 at 189; *Southcote v Stanley* (1856) 1 H & N 247; *Collis v Selden* (1868) LR 3 CP 495 (chandelier falling); *Sandys v Florence* (1878) 47 LJQB 598 (ceiling falling); *Duckes v Strong* (May 1902, unreported), CA (chimney falling and injuring guest). As to who is a guest see also PARA 202 note 13.

10 *Southcote v Stanley* (1856) 1 H & N 247, as reported in 25 LJ Ex 339.

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196. Limits of innkeeper's liability.

A hotel proprietor's general duty, as an innkeeper, to take proper care for the safety of his guests¹ does not extend to every room in his house, at all hours of the day or night, irrespective of the question whether any such guests may have a right or some reasonable cause to be there, but is limited to those places into which guests may reasonably be supposed to be likely to go in the belief, reasonably entertained, that they are entitled or invited to do so².

An innkeeper would be liable for injury done to a guest as a result of his swallowing some foreign substance in food served up to him at the inn through the negligence of the innkeeper's employees³, or through the food being infected with the germs of disease or otherwise unfit for human consumption⁴.

1 See PARA 195.

2 *Walker v Midland Rly Co* (1886) 55 LT 489, HL, a case under the Fatal Accidents Act 1846; *Lee v Luper* [1936] 3 All ER 817. Cf *Campbell v Shelbourne Hotel Ltd* [1939] 2 KB 534, [1939] 2 All ER 351. See also the Occupiers' Liability Act 1957 s 2(2); and PARA 195 note 1.

3 See *Brett v Holborn Restaurant Co* (1887) 3 TLR 309 (needle and thread).

4 See the Sale of Goods Act 1979 s 14 (implied terms as to quality and fitness); and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 77 et seq; *Frost v Aylesbury Dairy Co* [1905] 1 KB 608, CA. As to the right of each guest dining together to sue in contract, even though one may be the guest of the other, see *Lockett v A and M Charles Ltd* [1938] 4 All ER 170. Selling food not fit for human consumption is an offence under the Food Safety Act 1990: see s 14; and **FOOD** vol 18(2) (Reissue) PARA 360.

UPDATE

196 Limits of innkeeper's liability

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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D. SAFETY OF GUESTS' PROPERTY

197. Innkeeper's liability for guest's goods.

Subject to certain exceptions¹, the proprietor of a hotel², as an innkeeper, is an insurer of the property of his guests³ which is lost⁴ or stolen⁵ within the hospitium⁶ of the inn⁷, and he is under the same liability to make good to his guest any damage⁸ to the guest's property brought to the hotel⁹ as he would if the goods were lost¹⁰. The liability of a hotel proprietor is strict¹¹; it arises without proof of negligence on his part¹², but, subject to certain conditions, the liability can be limited in amount¹³.

This liability does not depend upon bailment, pledge or contract, for the duties, liabilities and rights of hotel proprietors with respect to goods brought to hotels by guests are founded upon the custom of the realm with regard to innkeepers, and they depend upon the common law or custom of the realm¹⁴, as modified by statute, and upon that alone; they do not come under any other head of law¹⁵. It is immaterial, so far as that obligation is concerned, that the goods are stolen by intruders or by the hotel's employees or by another guest, or that their loss is unexplained¹⁶; he is liable for keeping them safely unless they are lost by the guest himself¹⁷.

1 Certain categories of property are excepted from strict liability: see PARA 202; and see also note 11.

2 As to the meaning of 'hotel' see PARA 183.

3 I.e. those guests who are within the exception stated in PARA 199 text and notes 6-7.

4 *Reniger v Fogossa* (1552) 1 Plowd 1 at 9, Ex Ch; *Resolution of Judges* (1624) Hut 99; *Squire v Wheeler* (1867) 16 LT 93; *Bather v Day* (1863) 32 LJ Ex 171 at 173 per Pollock CB. 'Loss' would include loss by accidental fire: see *Thorogood v Marsh* (1819) Gow 105 (common carrier).

5 *Reniger v Fogossa* (1552) 1 Plowd 1 at 9, Ex Ch; *Anon* (1566) Moore KB 78; *Robins & Co v Gray* [1895] 2 QB 501, CA.

6 As to the hospitium see PARA 198.

7 *Reniger v Fogossa* (1552) 1 Plowd 1 at 9, Ex Ch; *Calye's Case* (1584) 8 Co Rep 32a; *Resolution of Judges* (1624) Hut 99.

8 At common law the strict liability of an innkeeper towards his guest's goods did not extend to injury or damage to the goods as opposed to their loss or theft: *Winkworth v Raven* [1931] 1 KB 652; *Williams v Owen* [1956] 1 All ER 104, [1955] 1 WLR 1293.

9 I.e. within the hospitium: see PARA 198.

10 Hotel Proprietors Act 1956 s 1(2).

11 He is not, however, liable for loss or damage caused by act of God or the Queen's enemies, and in certain circumstances strict liability may be excluded by the guest's own act: see PARA 202.

12 *Shacklock v EThorpe Ltd* [1939] 3 All ER 372, HL.

13 See PARA 203.

14 Fitz Nat Brev 94b; Hale's Commentary (9th Edn); *Calye's Case* (1584) 8 Co Rep 32a; 1 Smith LC (13th Edn) 120; *Reniger v Fogossa* (1552) 1 Plowd 1 at 9, Ex Ch; *Resolution of Judges* (1624) Hut 99; *Kirkman v Shawcross* (1794) 6 Term Rep 14 at 17; *Kent v Shuckard* (1831) 2 B & Ad 803 at 804 per Lord Tenterden CJ; *Dansey v Richardson* (1854) 3 E & B 144; *Squire v Wheeler* (1867) 16 LT 93 at 94 per Byles J; *Robins & Co v Gray* [1895] 2 QB 501 at 503-505, CA, per Lord Esher MR; and see *Anon* (1566) Moore KB 78; *Readhead v Midland Rly Co* (1869) LR 4 QB 379, Ex Ch.

15 *Robins & Co v Gray* [1895] 2 QB 501 at 503-504, CA, per Lord Esher MR. For exceptions see PARAS 199, 202. At common law an innkeeper was bound to keep his guest's goods without subtraction night and day: see Fitz Nat Brev 94b; Hale's Commentary (9th Edn), noting *Daleford v An Innkeeper* (1400) YB 2 Hen 4, fo 7; *Anon* (1409) YB 11 Hen 4, fo 45, pl 18; *Calye's Case* (1584) 8 Co Rep 32a; *Kirkman v Shawcross* (1794) 6 Term Rep 14 at 17; see *Anon* (1586) Godb 42; *Herbert v Lane* (1653) Sty 370.

16 *Morgan v Ravey* (1861) 6 H & N 265, criticising *Dawson v Chamney* (1843) 5 QB 164; and see *Winkworth v Raven* [1931] 1 KB 652 at 657-659 per Swift J; and cf *Phipps v New Claridge's Hotel Ltd* (1905) 22 TLR 49; *Burns v Royal Hotel (St Andres) Ltd* 1957 SLT 53.

17 *Robins & Co v Gray* [1895] 2 QB 501 at 504, CA.

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198. Hospitium of the inn.

The strict liability in respect of a guest's goods imposed on a hotel proprietor, as an innkeeper¹, only attaches where the goods are within the hospitium of the inn². The goods need not be in the special keeping of the hotel proprietor to render him liable³, for he is bound to answer for himself and for his family with respect to the chambers and stables, if they are within the hospitium of the inn⁴.

The hospitium consists of the inn buildings themselves and those precincts so intimately related to them as to be treated for this purpose as forming part of them⁵. If the innkeeper places, or invites his guest to place, any of a guest's goods outside the inn, the innkeeper will probably be liable for their loss⁶ or for damage to them⁷, since by his conduct he will have treated the place where the goods are put as within the hospitium of the inn⁸. Although the innkeeper's strict liability for a guest's property no longer attaches to property such as is most frequently left in the outer precincts of an inn⁹, a hotel proprietor remains liable for the loss of or damage to other luggage belonging to a guest if it is brought within the hospitium¹⁰, and the extent of the hospitium is therefore important.

1 See PARA 197. As to innkeepers see PARA 184 text and notes 5-7.

2 *Williams v Linnitt* [1951] 1 KB 565 at 580, [1951] 1 All ER 278 at 287, CA, per Asquith LJ.

3 *Bennett v Mellor* (1793) 5 Term Rep 273; *Calye's Case* (1584) 8 Co Rep 32a; *Armistead v Wilde* (1851) 17 QB 261 (goods left in commercial room). The liability may, however, be limited: see PARA 203.

4 *Calye's Case* (1584) 8 Co Rep 32a, citing *De N v De S* (1368) 42 Lib Ass, fo 260, pl 17 per Knivet CJ.

5 *Williams v Linnitt* [1951] 1 KB 565 at 580, [1951] 1 All ER 278 at 287, CA. Stable buildings and garages annexed to an inn, and inner courts enclosed by its walls, have been so treated (*Williams v Linnitt*) and so has a car park (*Williams v Linnitt*) and a yard alongside the inn premises (*Davies v Clarke* (1953) 103 Ljo 141). The test is whether the place is a part of the inn premises intended and suitable for use in connection with the innkeeper's business: see *Williams v Linnitt* at 577 and at 285; *Watson v People's Refreshment House Association Ltd* [1952] 1 KB 318 at 323-324, [1952] 1 All ER 289 at 291.

6 *Williams v Linnitt* [1951] 1 KB 565 at 581, [1951] 1 All ER 278 at 287, CA; *Jones v Tyler* (1834) 1 Ad & El 522; *Watson v People's Refreshment House Association Ltd* [1952] 1 KB 318 at 322, [1952] 1 All ER 289 at 292. Permission, as distinct from invitation, is not enough: *Watson v People's Refreshment House Association Ltd*. See also *Gresham v Lyon* [1954] 2 All ER 786 at 788, [1954] 1 WLR 1100 at 1102.

7 See PARA 197 text and note 8.

8 *Saunders v Plummer* (1662) O Bridg 223; *Aria v Bridge House Hotel (Staines) Ltd* (1927) 137 LT 299.

9 Vehicles and property left in the inn precincts, as well as horses and other live animals and their harness or equipment, are excepted from the rule as to strict liability: Hotel Proprietors Act 1956 s 2(2); and see PARA 202.

10 See the text and note 5. As to vehicles parking, one consideration as to hospitium is whether what is used is the only accommodation provided: *Watson v People's Refreshment House Association Ltd* [1952] 1 KB 318, [1952] 1 All ER 289.

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199. Conditions of innkeeper's liability.

At common law an innkeeper was liable for the loss of goods brought to his inn by any traveller¹, even if he were only seeking temporary refreshment², but the strict liability of a hotel proprietor, as an innkeeper³, is only towards those travellers for whom sleeping accommodation has been engaged. Without prejudice to any other liability⁴ incurred by him with respect to property brought to the hotel⁵, the proprietor of a hotel is not liable as an innkeeper to make good to any traveller any loss or damage to that property except where (1) at the time of the loss or damage sleeping accommodation at the hotel had been engaged for the traveller⁶; and (2) the loss or damage occurred during the period commencing with the midnight immediately preceding, and ending with the midnight immediately following, a period for which the traveller was a guest at the hotel and entitled to use the accommodation so engaged⁷.

1 As to who is a traveller see PARA 189 note 3. See also PARA 201, where the possibility that a traveller or guest may lose his status as such is discussed. As to the term 'guest' see PARA 201 note 6.

2 *Calye's Case* (1584) 8 Co Rep 32a; *Bennett v Mellor* (1793) 5 Term Rep 273; *Williams v Linnitt* [1951] 1 KB 565, [1951] 1 All ER 278, CA.

3 As to this liability see PARA 197. As to innkeepers see PARA 184 text and notes 5-7.

4 Eg as a bailee or for negligence: see **BAILMENT** vol 3(1) (2005 Reissue) PARA 39 et seq; **NEGLIGENCE**.

5 Ie within the hospitium: see PARA 198.

6 Hotel Proprietors Act 1956 s 2(1)(a).

7 Hotel Proprietors Act 1956 s 2(1)(b).

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200. Extent of innkeeper's strict liability.

Subject to certain limited exceptions¹, a hotel proprietor's strict liability, as an innkeeper², extends to all movables, even such as at common law were not the subject of felony, for example charters and evidences concerning freehold or inheritance, or obligations or other deeds or specialties, being things in action³. It extends also to money⁴. He is not liable, however, for the loss of articles deposited in his inn for the purpose of being forwarded by a carrier⁵.

Where a guest's goods are lost within the hotel, the absence of negligence on the part the hotel proprietor or of his employees⁶, or the fact that he was sick and mentally disordered at the time of the loss, does not affect his liability⁷.

A hotel proprietor cannot avoid his responsibility by telling his guest that there are persons in the hotel whose character he does not know and that the guest is to put his goods in his room, of which the key is given to him, at his peril, for the hotel proprietor cannot take any charge of them⁸; nor by telling a guest that he will not be responsible for any goods that are not put under lock and key⁹. He cannot by a special agreement contract out of his strict liability¹⁰. In order to hold the proprietor of a hotel, in his capacity as an innkeeper, strictly accountable for the loss of or damage to a guest's goods, the guest must prove:

- 645 (1) that he had been received at the hotel¹¹;
- 646 (2) that at the time of the loss or damage he was a traveller¹²; and
- 647 (3) that sleeping accommodation had been engaged at the hotel by him or on his behalf¹³.

1 See PARA 202.

2 As to this liability see PARA 197. As to innkeepers see PARA 184 text and notes 5-7.

3 *Calye's Case* (1584) 8 Co Rep 32a; *Kent v Shuckard* (1831) 2 B & Ad 803 at 804-805 per Taunton J.

4 *Kent v Shuckard* (1831) 2 B & Ad 803; *Beedle v Morris* (1609) Cro Jac 224.

5 *Williams v Gesse* (1837) 3 Bing NC 849.

6 *W v T* (1368) YB 42 Edw 3, fo 11, pl 13; *Bennett v Mellor* (1793) 5 Term Rep 273 at 276 per Buller J; *Morgan v Ravey* (1861) 6 H & N 265; *Squire v Wheeler* (1867) 16 LT 93; *Cunningham v Philp* (1896) 12 TLR 352; *Butler & Co Ltd v Quilter* (1900) 17 TLR 159; and see *Broadwater v Blot* (1817) Holt NP 547.

7 *Cross v Andrews* (1598) Cro Eliz 622.

8 *Anon* (1566) Moore KB 78.

9 *Harland's Case* (1641) Clay 97. Cf *Sanders v Spencer* (1566) 3 Dyer 266b, where, after warning the guest to put his goods in a room with a lock and key and stating that he would accept liability for them in that event but not otherwise, the innkeeper was held not liable when the goods were left loose in the outer yard and stolen. The ratio decidendi of this case is, however, obscure.

10 See *Williams v Linnitt* [1951] 1 KB 565, [1951] 1 All ER 278, CA, in particular at 584-585 and at 290 per Denning LJ; *Burns v Royal Hotel (St Andrews) Ltd* 1957 SLT 53 at 56. The decision in *Brand v Glasse* (1584)

Moore KB 158 to the effect that an agreement that an innkeeper should only be responsible for goods delivered by the guest to him for safe custody is difficult to reconcile with the decision in *Harland's Case* (1641) Clay 97 (see the text and note 9), unless there is some consideration for the agreement apart from the acceptance of the guest as a guest at the inn, and would not now be followed. Cf also *Richmond v Smith* (1828) 8 B & C 9 at 10 per Lord Tenterden CJ.

11 *Calye's Case* (1584) 8 Co Rep 32a; *Lane v Cotton* (1702) 12 Mod Rep 472 at 480; *Bennett v Mellor* (1793) 5 Term Rep 273; *Strauss v County Hotel Co* (1883) 12 QBD 27; *Orchard v Bush & Co* [1898] 2 QB 284; *Wright v Anderton* [1909] 1 KB 209.

12 *Williams v Linnitt* [1951] 1 KB 565, [1951] 1 All ER 278, CA; *Grimston v Innkeeper* (1627) Het 49, where in an action for goods stolen judgment was given for the defendant, even after verdict for the plaintiff, on the ground that the declaration (ie the plaintiff's pleading) had not alleged that the plaintiff was a traveller. As to who is a traveller see PARA 189 note 3.

13 See PARA 199 text to note 7.

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201. Person ceasing to be a guest.

Formerly a traveller ceased to be a guest if he stayed at an inn more than three days¹, but if nothing occurs to alter the relationship of the parties² he may remain more than three days³, and indeed for several days⁴ or even several months without a change of status⁵. It seems, however, that a person who comes to an inn and makes an agreement for boarding there for a considerable term such as three months may constitute himself a boarder and not be a guest⁶. Where a person residing at a hotel has lost the character of a guest, the hotel proprietor, as an innkeeper, is entitled, on giving him reasonable notice, to require him to leave⁷.

A traveller whom the innkeeper refuses to receive because the inn is full, but who then, without the assent of the innkeeper or his employees, obtains permission from a guest to share his bedroom in the inn, is not a guest⁸. A traveller does not become a guest if he goes to an inn intending to lodge there, but, altering his intention, leaves without even obtaining refreshment there⁹. A person who is lodging at the inn merely as a friend, at the request of the innkeeper, is not for this purpose a guest¹⁰.

To constitute a person a guest, it is not necessary that he should actually be in the inn when the goods are stolen¹¹. If, however, he leaves the inn for several days, he is not during the period of his absence a guest at the inn, even though some of his goods are left by him with the innkeeper during his absence¹².

A person is not any the less a guest because by arrangement with the innkeeper some other person pays for the accommodation and refreshment provided¹³. Thus the visitor of a guest may be himself a guest¹⁴.

It is a question of fact when a person ceases to be a guest¹⁵.

1 *Calye's Case* (1584) 8 Co Rep 32a (overruled on this point: see note 3); and see PARA 189 note 6.

2 *Allen v Smith* (1862) 12 CBNS 638 (seven months); and see *Hanley v Bethell Hotels Ltd* (1917) 52 ILT 10.

3 *Harland's Case* (1641) Clay 97, overruling in this particular *Calye's Case* (1584) 8 Co Rep 32a; *Gulielm's Case* (1625) Lat 88.

4 *Harland's Case* (1641) Clay 97 (14 days).

5 See PARA 189 note 6.

6 *Drope v Thaire* (1626) Lat 126. In *Parker v Flint* (1699) Holt KB 366, Holt CJ distinguished a guest from one who simply lodged at an inn and did not eat or drink there, and ruled that the latter did not come under the innkeeper's protection. See also *Grimston v Innkeeper* (1627) Het 49. Under the Hotel Proprietors Act 1956 s 2(1), however, although a hotel proprietor's strict liability for travellers' goods only arises if the loss or damage occurred during a period for which the traveller was a guest at the hotel, his status as a guest is dependent on sleeping accommodation having been engaged for him and not on his taking meals at the hotel: see PARA 199. As to change of status see PARA 189 note 6.

7 *Lamond v Richard* [1897] 1 QB 541, CA.

8 *White's Case* (1558) 2 Dyer 158b; Doctor and Student 238; Fitz Nat Brev 94b.

9 *Strauss v County Hotel Co* (1883) 12 QBD 27.

10 *Calye's Case* (1584) 8 Co Rep 32a.

11 *W v T* (1368) YB 42 Edw 3, fo 11, pl 13, where the guest went out on business; *Sand's Case* (1603) cited in Moore KB at 877; *Biddle v Morice* (1609) 2 Dyer 158b, n, Vaillant's Edn, where the guest went out, saying that he would return at night.

12 *Gelley v Clerk* (1607) Cro Jac 188. Cf *Allen v Smith* (1863) 1 New Rep 404, where the occasional absence of a guest did not destroy the relationship of guest and innkeeper. It is submitted that this is still so despite the Hotel Proprietors Act 1956 s 2(1) (see PARA 199), although its effect is to protect for a limited period (ie up to midnight) the property of a person who has ceased to be a guest.

13 *Wright v Anderton* [1909] 1 KB 209.

14 *Cryan v Hotel Rembrandt Ltd* (1925) 133 LT 395.

15 *Portman v Griffin* (1913) 29 TLR 225, where a person paid his bill and departed leaving his luggage to be called for, and it was held that he was no longer a guest; but see now the Hotel Proprietors Act 1956 s 2(1) (see PARA 199), which gives limited protection to a guest's property after he has ceased to be a guest; and cf *Lamond v Richard* [1897] 1 QB 541, CA.

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202. When innkeeper is not liable.

If goods belonging to a guest for whom accommodation has been engaged¹ are lost or stolen from or damaged in a hotel, the hotel proprietor, as an innkeeper², is prima facie liable³, but he will escape liability in the following cases: A hotel proprietor is not liable:

- 648 (1) where the loss or damage is caused by the misconduct or negligence of the guest who suffers the loss⁴; thus a hotel proprietor is not liable when the guest's companion or employee steals or carries away the goods⁵, or where the guest's action has been so negligent as to induce or make likely the loss⁶; however an innkeeper is not relieved from responsibility by the guest's negligence unless that negligence occasions the loss in the sense that the loss would not have occurred if the guest had used the ordinary care of a prudent person under the circumstances⁷;
- 649 (2) where the guest, by way of excessive caution and security, assumes the exclusive charge of a room or of goods so as to show an intention to relieve the innkeeper from all responsibility⁸; whether in a particular case the guest has so conducted himself as to take upon himself exclusive care, control and custody to the exclusion of the innkeeper and other persons is a question of fact⁹;
- 650 (3) where the loss or damage arises from an act of God¹⁰ or the Queen's enemies¹¹, that is alien enemies¹²;
- 651 (4) where the guest¹³ has suffered loss of or damage to any vehicle or any property left in the vehicle, or to any horse or any other live animal or its harness or equipment¹⁴.

1 See PARA 199.

2 As to innkeepers see PARA 184 text and notes 5-7.

3 *Burgess v Clements* (1815) 4 M & S 306; and see **CIVIL PROCEDURE** vol 11 (2009) PARA 770.

4 *Calye's Case* (1584) 8 Co Rep 32a; 1 Smith LC (13th Edn) 120; *Burgess v Clements* (1815) 4 M & S 306; *Annistead v Wilde* (1851) 17 QB 261; *Filipowski v Merryweather* (1860) 2 F & F 285.

5 *Calye's Case* (1584) 8 Co Rep 32a; *Burgess v Clements* (1815) 4 M & S 306.

6 The ostentatious display of money and then the leaving of it in an ill-secured place in the presence of several persons is evidence of negligence: *Armistead v Wilde* (1851) 17 QB 261; see also *Sanders v Spencer* (1566) 3 Dyer 266b. There is no rule of law that a guest is guilty of negligence if he locks his door but does not draw in the night bolt, even though a notice is hung up in the bedroom requesting visitors to use the night bolt, and to leave money, jewellery or articles of value at the bar: *Filipowski v Merryweather* (1860) 2 F & F 285. See also *Gresham v Lyon* [1954] 2 All ER 786, [1954] 1 WLR 1100. Similarly, there is no rule of law that for a guest to leave his bedroom door unlocked is negligence: *Mitchell v Woods* (1867) 16 LT 676; see also *Shacklock v Ethorpe Ltd* [1939] 3 All ER 372, HL (where a guest in a small country town hotel where it was not the practice to lock doors and where there were no duplicate keys failed to lock his bedroom door and was held not to be negligent); *Brewster v Drennan* [1945] 2 All ER 705, CA. As to negligence generally see **NEGLIGENCE**. Each case must depend upon its own circumstances: *Herbert v Markwell* (1881) 45 LT 649 (affd [1882] WN 112, CA); *Oppenheim v White Lion Hotel Co* (1871) LR 6 CP 515; *Portman v Griffin* (1913) 29 TLR 225.

7 *Cashill v Wright* (1856) 6 E & B 891 (evidence of negligence to be left to the jury where a guest, after showing money in the commercial room, went to bed and left money in his trouser pocket in the bedroom and left the bedroom door ajar). For instances of negligence on the part of the guest relieving the innkeeper from liability see also *Oppenheim v White Lion Hotel Co* (1871) LR 6 CP 515 (bag of money displayed in commercial room and then left in unlocked bedroom in a place easily discoverable); *Jones v Jackson* (1873) 29 LT 399 (money left in bedroom in easily discoverable place, despite notice that innkeeper was prepared to take charge of valuables; guest went out in the morning and did not return until evening); *Chamier v De Vere Hotels Ltd* (1928) 72 Sol Jo 155 (valuables left in unlocked drawer). For instances where there was held to be no negligence see *Carpenter v Haymarket Hotel Ltd* [1931] 1 KB 364, DC (jewel case in unlocked suitcase left in locked room); *Shacklock v Ethrope Ltd* [1939] 3 All ER 372, HL (jewel case in locked suitcase left in unlocked room); *Candy v Spencer* (1862) 3 F & F 306 (luggage left in hall although guest was told that the commercial room was the proper place to leave it); *Marchioness of Huntly v Bedford Hotel Co Ltd* (1891) 56 JP 53, CA (guest found signs suggestive of a thief but did not immediately look at her jewel box or inform the hotel proprietor); *Gee, Walker and Slater Ltd v Friary Hotel (Derby) Ltd* (1949) 66 (pt 1) TLR 59, CA (car left in hotel forecourt with doors locked and ignition key removed). See also *Douglas Iron Works v Owen* [1951] IR 93 (car parked with ignition key left in, driven away by hotel porter without authority). As to the liability for vehicles see, however, head (4) in the text.

8 *Farnworth v Packwood* (1816) Holt NP 209; *Richmond v Smith* (1828) 8 B & C 9.

9 *Farnworth v Packwood* (1816) Holt NP 209; *Richmond v Smith* (1828) 8 B & C 9. The mere fact that a commercial traveller who came into an inn as a guest chose to have his luggage put in the commercial room, although it was the habit of the inn staff to put guests' luggage in the bedrooms, was no evidence that the guest intended to take exclusive control of his luggage: *Richmond v Smith* at 10 per Lord Tenterden. The fact that a guest does not deposit an article at the office in accordance with a notice posted in his room does not imply that he retains the protection of it in his own hands to the relief of the innkeeper: *Carpenter v Haymarket Hotel Ltd* [1931] 1 KB 364, DC.

10 *Dale v Hall* (1750) 1 Wils 281 (common carrier); *Morgan v Ravey* (1861) 6 H & N 265; cf **BAILMENT** vol 3(1) (2005 Reissue) PARA 16. As to the meaning of 'act of God' see *Nugent v Smith* (1876) 1 CPD 423 at 435, CA, per Cockburn CJ; *Siordet v Hall* (1828) 4 Bing 607; *Nichols v Marsland* (1876) 2 ExD 1, CA.

11 *Reniger v Fogossa* (1552) 1 Plowd 1 at 9, Ex Ch; *Dale v Hall* (1750) 1 Wils 281 (common carrier); *Morgan v Ravey* (1861) 6 H & N 265.

12 See *Master of Marshalsea's Case* (1455) YB 33 Hen 6, fo 1, pl 3. See also the Liability for War Damage (Miscellaneous Provisions) Act 1939 s 3.

13 The term 'guest' in this context appears to be narrower than 'traveller' (see PARA 189 note 3), and to apply only to those travellers for whom sleeping accommodation at the hotel has been reserved. The strict liability imposed upon an innkeeper does not extend to the property of other travellers, eg persons calling for temporary refreshment: see PARA 189 text and note 3. See also PARA 201 note 6.

14 Hotel Proprietors Act 1956 s 2(2). Similarly, the innkeeper has no lien as respects property excepted from strict liability: see PARA 213. At common law an innkeeper's liability for his guest's goods extended to his guest's vehicle or horse (see *Stanyon v Davies* (1704) 6 Mod Rep 223; *Dawson v Chamney* (1843) 5 QB 164; *Winkworth v Raven* [1931] 1 KB 652 at 657 per Swift J; *Williams v Linnitt* [1951] 1 KB 565, [1951] 1 All ER 278, CA); but this did not extend to a livery stable (*Barnard v How* (1824) 1 C & P 366), although he might be liable for his employee's wrongful act by which a guest's horse was injured (*Bather v Day* (1863) 32 LJ Ex 171 at 173 per Martin B) or lost (*Barnard v How*); cf **BAILMENT** vol 3(1) (2005 Reissue) PARA 38.

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203. Limitation of liability by notice.

Where the proprietor of a hotel is liable, as an innkeeper¹, to make good the loss of or damage to property brought to the hotel, then, provided a statutory notice² is properly exhibited, his liability to any one guest³ will not exceed £50 in respect of any one article, or £100 in the aggregate⁴, except where:

- 652 (1) the property was stolen, lost or damaged through the default, neglect or wilful act⁵ of the proprietor or some servant of his⁶; or
- 653 (2) the property was deposited⁷ by or on behalf of the guest expressly for safe custody⁸, with the proprietor or some servant of his authorised, or appearing to be authorised, for the purpose, and, if so required by the proprietor or that servant, in a container fastened or sealed by the depositor⁹; or
- 654 (3) at a time after the guest had arrived at the hotel, either the property was offered for deposit as described in head (2) above and the proprietor or his servant refused to receive it, or the guest or some other guest acting on his behalf wished so to offer the property but, through the default of the proprietor or his servant, was unable to do so¹⁰.

The burden of proving that the loss or injury occurred through the default or neglect or wilful act of the innkeeper or his servant lies upon the guest¹¹.

The proprietor of a hotel, as an innkeeper, is not entitled to the protection of the above statutory limitation of liability unless, at the time when the property in question was brought to the hotel, a copy of the prescribed statutory notice, printed in plain type, was conspicuously displayed in a place where it could conveniently be read by his guests at or near the reception office or desk or, where there is no such office or desk, at or near the main entrance¹². The due exhibition of this notice is a condition precedent to the limitation of the innkeeper's liability¹³, and if the notice exhibited in the inn is unintentionally misprinted, for example by the omission of a word, it does not comply with the statute and the innkeeper's liability is not limited¹⁴.

1 As to this liability see PARA 197. As to innkeepers see PARA 184 text and notes 5-7.

2 For the form of the notice see the Hotel Proprietors Act 1956 s 2(3) proviso, Schedule.

3 As to who are guests in this context see PARA 202 note 13.

4 In the area of a London borough council, the statutory limits are £750 and £1,500 respectively: see the London Local Authorities Act 2004 s 24(1).

5 'Wilful' applies only to the word 'act' and not to the words 'default' or 'neglect': *Squire v Wheeler* (1867) 16 LT 93; *Behrens v Grenville Hotel (Bude) Ltd* (1925) 69 Sol Jo 346.

6 Hotel Proprietors Act 1956 s 2(3)(a).

7 To constitute an express deposit it must be proved that something was said or done to convey the intention to the innkeeper and that the innkeeper received the property with the intention of making himself liable for its safety: see *Whitehouse v Pickett* [1908] AC 357, HL; and *O'Connor v Grand International Hotel Co* [1898] 2 IR 92. Where a guest at a hotel, on asking for the cloakroom, was directed to a bedroom, where she

deposited her coat, and from where it was subsequently stolen, it was held that it was negligence on the part of the hotelkeeper to use an unlocked bedroom as a cloakroom without anyone in charge, and that the statutory limitation did not apply: *Cryan v Hotel Rembrandt Ltd* (1925) 133 LT 395.

8 As to deposit for safe custody see further PARA 204.

9 Hotel Proprietors Act 1956 s 2(3)(b). Although the 'boots' of a hotel has no implied authority to receive goods expressly for safe custody (see *Moss v Russell* (1844) 1 TLR 13, CA), the 'appearing' to be authorised' must remain a question of fact.

10 Hotel Proprietors Act 1956 s 2(3)(c).

11 *Whitehouse v Pickett* [1908] AC 357, HL. See also **CIVIL PROCEDURE** vol 11 (2009) PARA 770. For examples of negligence by the innkeeper or his servants see *Medawar v Grand Hotel Co* [1891] 2 QB 11, CA; *Marchioness of Huntly v Bedford Hotel Co Ltd* (1891) 56 JP 53; *Belleville v Palatine Hotel and Buildings Co Ltd* (1944) 171 LT 363; *Bonham-Carter v Hyde Park Hotel Ltd* (1948) 64 TLR 177; *Olley v Marlborough Court Ltd* [1949] 1 KB 532, [1949] 1 All ER 127, CA.

12 Hotel Proprietors Act 1956 s 2(3) proviso. In *Shacklock v E Thorpe Ltd* [1937] 4 All ER 672 (affd on another point [1939] 3 All ER 372, HL), it was held that similar requirements under earlier legislation were complied with by exhibiting the notice in a corridor above a glass case some six feet (2 metres) from the ground. See also *Carey v Long's Hotel Co Ltd* (1891) 7 TLR 213, CA.

13 *Hodgson v Ford & Sons* (1892) 8 TLR 722, CA; and see *Cryan v Hotel Rembrandt Ltd* (1925) 133 LT 395.

14 *Spice v Bacon* (1877) 2 ExD 463, CA, decided under the Innkeepers' Liability Act 1863 s 1 (repealed).

UPDATE

203 Limitation of liability by notice

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(8) INNKEEPERS' DUTIES, RIGHTS AND LIABILITIES ATTACHING TO CERTAIN HOTEL PROPRIETORS/(ii) Duties, Rights and Liabilities/D. SAFETY OF GUESTS' PROPERTY/204. Deposit of goods for safe custody.

204. Deposit of goods for safe custody.

Goods are deposited expressly for safe custody only if the guest informs the hotel proprietor, as an innkeeper¹, in a reasonable and intelligible manner that the deposit is for safe custody². Merely causing a bag of valuable (but undeclared) contents to be placed in the hotel office, even though the guest had been in the habit of doing the same thing on many former occasions, is not sufficient to bring to the innkeeper's notice that the bag is deposited for safe custody so as to make the deposit one expressly for safe custody³.

The 'boots' of a hotel has no implied authority to receive goods expressly for safe custody⁴, but where goods have been handed to a proper official for safe custody and are subsequently lost through the neglect of that employee, the innkeeper is liable⁵.

A notice posted in the guest's bedroom stating that articles of value, if not kept under lock, should be deposited with the manager, is not evidence of a special contract with the guest that the innkeeper will be liable to a greater amount than the statutory limit⁶ for articles of value which are lost or stolen if they are kept there by the guest under lock⁷.

1 As to innkeepers see PARA 184 text and notes 5-7.

2 *Moss v Russell* (1884) 1 TLR 13, CA; *Whitehouse v Pickett* [1908] AC 357, HL; *O'Connor v Grand International Hotel Co* [1898] 2 IR 92.

3 *Whitehouse v Pickett* [1908] AC 357, HL.

4 *Moss v Russell* (1884) 1 TLR 13, CA; see PARA 203 text and note 9.

5 *Behrens v Grenville Hotel (Bude) Ltd* (1925) 69 Sol Jo 346.

6 I.e £50 in respect of any article or £100 in the aggregate or, in the area of a London Borough, £750 in respect of any article or £1,500 in the aggregate: see PARA 203.

7 *Marchioness of Huntly v Bedford Hotel Co Ltd* (1891) 56 JP 53, CA. In *Olley v Marlborough Court Ltd* [1949] 1 KB 532, [1949] 1 All ER 127, CA, it was held that the terms of a notice exhibited in a bedroom were not incorporated in the guest's contract since she did not see it until after she had been accepted as a guest.

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E. LIABILITY TO THIRD PERSONS

205. Innkeeper's liability for guest's debt.

Apart from an antecedent promise by an innkeeper to pay a debt incurred by his guest, a hotel proprietor, as an innkeeper¹, is not responsible for it if the guest departs leaving the debt unpaid; but such an antecedent promise might be inferred if the innkeeper had been in the habit of discharging bills left unpaid by guests².

1 As to innkeepers see PARA 184 text and notes 5-7.

2 *Callard v White* (1816) 1 Stark 171, where a laundry bill was left unpaid.

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206. Innkeeper's liability for guest's dog.

An innkeeper will not be liable for injury or damage, whether to cattle or poultry or to persons, caused by a dog living at the inn unless he is the keeper of the animal².

¹ A person is a keeper of an animal if, inter alia, if he owns it or if he has it in his possession: Animals Act 1971 s 6(3)(a). It follows that there may be more than one 'keeper': see **ANIMALS** vol 2 (2008) PARA 747.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(8) INNKEEPERS' DUTIES, RIGHTS AND LIABILITIES ATTACHING TO CERTAIN HOTEL PROPRIETORS/(ii) Duties, Rights and Liabilities/F. ENFORCEMENT OF LIABILITIES/(A) Civil Remedies/207. Remedy for innkeeper's refusal to receive guest.

F. ENFORCEMENT OF LIABILITIES

(A) CIVIL REMEDIES

207. Remedy for innkeeper's refusal to receive guest.

If the proprietor of a hotel, as an innkeeper¹, refuses without lawful excuse to receive as a guest and lodge a traveller², a claim will lie against him at the suit of the traveller³.

The claim should be against the defendant as a common innkeeper⁴ without alleging any authority in the claimant to go to the inn⁵, as the claim is not a claim for breach of contract⁶ and is maintainable without proof of special damage⁷.

Similarly a claim will lie against an innkeeper for refusing to receive a traveller's horse⁸.

Where the refusal is alleged to be due to discrimination on the ground of colour, race or ethnic or national origin, or of sex, gender reassignment, pregnancy or maternity, religion or belief, disability or sexual orientation⁹, statute provides additional remedies¹⁰.

1 As to innkeepers see PARA 184 text and notes 5-7.

2 As to who are travellers and guests see PARAS 189 note 3, 202 note 13.

3 *Parker v Flint* (1699) 12 Mod Rep 254; *Bennett v Mellor* (1793) 5 Term Rep 273 at 275 per Buller J; *Fell v Knight* (1841) 8 M & W 269; *Anon* (1465) YB 5 Edw 4, fo 2, pl 20; *Anon* (1460) YB 39 Hen 6, fo 18, pl 24, cited Bro Abr, Action sur le case, pl 76; *Lane v Cotton* (1702) 12 Mod Rep 472 at 484, 1 Hawk PC (8th Edn) 714; *Anon* (1502) Keil 50; *Anon* (1623) 2 Roll Rep 345 (the name of this case is given in 3 Burr at 1501); *Hawthorne v Hammond* (1844) 1 Car & Kir 404; *Johnson v Midland Rly Co* (1849) 4 Exch 367 at 373 per Parke B; and see *Parsons v Gingell* (1847) 4 CB 545 at 555 note (a); *Jackson v Rogers* (1683) 2 Show 327. Upon complaint to the ruler of the vill, it was said that the constable would compel the innkeeper to receive the traveller, but it seems doubtful whether a constable had any power to compel an innkeeper except by bringing an indictment against him. On this subject see *Anon* (1502) Keil 50; *Luton v Bigg* (1691) Skin 291, sub nom *Newton v Trigg* (1691) 1 Show 268 per Eyres J; *Anon* (1460) YB 39 Hen 6, fos 18-19, cited Bro Abr, Action sur le case, pl 76; *Anon* (1465) YB 5 Edw 4, fo 2, pl 20, cited Bro Abr, Action sur le case, pl 92; 1 Hawk PC (8th Edn) 714.

4 *Anon* (1623) 2 Roll Rep 345 (the name of this case is given in 3 Burr at 1501); *Parker v Flint* (1699) 12 Mod Rep 254.

5 *Anon* (1623) 2 Roll Rep 345.

6 *Anon* (1502) Keil 50; and see *Saunders v Plummer* (1662) O Bridg 223.

7 *Constantine v Imperial Hotels Ltd* [1944] 1 KB 693, [1944] 2 All ER 171.

8 *Saunders v Plummer* (1662) O Bridg 223. See also PARA 186 note 24.

9 As to the prohibition of discrimination on these grounds see PARAS 192-193, 210.

10 A person who has suffered unlawful discrimination may bring a claim in tort against the person who has discriminated against him: see the Sex Discrimination Act 1975 s 66(1) (amended by SI 2005/2467); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 415; the Race Relations Act 1976 s 57(1) (amended by SI 2003/1626); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 500; the Equality Act 2006 s 66(1); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 711; the Disability Discrimination Act 1995 s 25(1); and

DISCRIMINATION vol 13 (2007 Reissue) PARA 644; the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 20(1); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 753.

UPDATE

207 Remedy for innkeeper's refusal to receive guest

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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208. Guest's remedy for personal injury.

The remedy of a guest¹ against the proprietor of a hotel who has not fulfilled his duty as an innkeeper² in respect of care for the guest's personal safety is by a claim for negligence³.

1 In this context 'guest' means 'traveller': see PARA 189 note 3. The duty is not limited to those travellers for whom accommodation at the hotel has been engaged: cf PARA 199 text to notes 6-7.

2 As to innkeepers see PARA 184 text and notes 5-7.

3 As to the duty of the hotel proprietor see PARA 195; and as to the enforcement of liability for negligence see **NEGLIGENCE**.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(8) INNKEEPERS' DUTIES, RIGHTS AND LIABILITIES ATTACHING TO CERTAIN HOTEL PROPRIETORS/(ii) Duties, Rights and Liabilities/F. ENFORCEMENT OF LIABILITIES/(A) Civil Remedies/209. Guest's remedy for loss of or damage to property.

209. Guest's remedy for loss of or damage to property.

A claim may be brought against a hotel proprietor, as an innkeeper¹, for loss of or damage to a guest's² goods³. The claimant should plead that the defendant is the proprietor of a hotel which was at all material times an inn⁴.

If an employer's goods are lost or stolen at the inn where an employee, unaccompanied by his employer, is a guest, the claim may be brought by the employer⁵.

1 As to innkeepers see PARA 184 text and notes 5-7.

2 I.e. a guest for whom sleeping accommodation at the hotel has been engaged: see PARA 199. Certain kinds of goods are excepted from strict liability: see PARA 202.

3 Fitz Nat Brev 94b; Hale's Commentary (9th Edn), noting *Anon* (1465) YB 5 Edw 4, fo 2, pl 20; -- *v Horslow* (1443) YB 22 Hen 6, fo 21, pl 38; *Basse v P* (1444) YB 22 Hen 6, fo 38; *Gordon v Silber* (1890) 25 QBD 491. Early examples of such claims may be found in *Anon* (1586) Godb 42; *Herbert v Lane* (1653) Sty 370; *Mason v Grafton* (1618) Hob 245.

4 See the Hotel Proprietors Act 1956 s 1(1); and PARA 183.

5 *Windham and Mead's Case* (1589) 4 Leon 96; *Beedle v Morris* (1609) Cro Jac 224; *Candy v Spencer* (1862) 3 F & F 306.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(8) INNKEEPERS' DUTIES, RIGHTS AND LIABILITIES ATTACHING TO CERTAIN HOTEL PROPRIETORS/(ii) Duties, Rights and Liabilities/F. ENFORCEMENT OF LIABILITIES/(B) Criminal Proceedings/210. Offences relating to unlawful discrimination.

(B) CRIMINAL PROCEEDINGS

210. Offences relating to unlawful discrimination.

It is an offence knowingly or recklessly to make a false or misleading statement to another person that he will not, in acting on it, be aiding or abetting unlawful discrimination in the provision of accommodation or of facilities for entertainment, recreation or refreshment¹ on the ground of colour, race or ethnic or national origin, or of sex, gender reassignment, pregnancy or maternity, religion or belief, disability or sexual orientation².

¹ As to such unlawful discrimination see PARAS 192-193.

² See the Sex Discrimination Act 1975 s 42(4) (amended by the Criminal Justice Act 1982 ss 37, 38, 46); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 392; the Race Relations Act 1976 s 33(4) (similarly amended); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 477; the Equality Act 2006 73(2); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 716; the Disability Discrimination Act 1995 s 57(4); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 528; the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 29(2); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 753. Note that these offences are not confined to innkeepers.

UPDATE

210 Offences relating to unlawful discrimination

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(8) INNKEEPERS' DUTIES, RIGHTS AND LIABILITIES ATTACHING TO CERTAIN HOTEL PROPRIETORS/(ii) Duties, Rights and Liabilities/F. ENFORCEMENT OF LIABILITIES/(B) Criminal Proceedings/211. Letting infected room.

211. Letting infected room.

The keeper of a hotel¹ or inn who allows a room in it in which a person has to his knowledge been suffering from a notifiable disease² to be occupied by any other person before the room, and all articles in it liable to retain infection, have been disinfected to the satisfaction of the proper officer of the local authority for the district³ or a registered medical practitioner⁴ as testified by a certificate signed by him, is liable to a fine not exceeding level 2 on the standard scale⁵.

1 This duty is not confined to hotel proprietors within the meaning of the Hotel Proprietors Act 1956 s 1(3) (see PARA 184), but applies equally to keepers of residential and private hotels, and to other boarding establishments.

2 As to the meaning of 'notifiable disease' see PARA 194 note 2.

3 The proper officer is the officer appointed for the purpose by the local authority: Public Health (Control of Disease) Act 1984 s 74.

4 As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARAS 3-4.

5 Public Health (Control of Disease) Act 1984 s 29(3), (4). As to the standard scale see PARA 17 note 21.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(8) INNKEEPERS' DUTIES, RIGHTS AND LIABILITIES ATTACHING TO CERTAIN HOTEL PROPRIETORS/(iii) Innkeepers' Remedies/212. Claims against guests.

(iii) Innkeepers' Remedies

212. Claims against guests.

The proprietor of a hotel, as an innkeeper¹, may bring a claim against his guest for the price of whatever accommodation and supplies the guest has received from him², or he may sue anyone who has promised him to pay for the guest so far as the promise extends³. Several persons dining together may be jointly liable⁴, or there may be facts which show that there is no joint liability, and that they are severally liable each for his own share⁵, or that one only is liable for all⁶.

1 As to innkeepers see PARA 184 text and notes 5-7. As to the offence of obtaining services (eg accommodation or refreshment) dishonestly see the Fraud Act 2006 s 11; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

2 *Watbroke v Griffith* (1609) Moore KB 876; and see *Pinchon's Case* (1611) 9 Co Rep 86b.

3 *Anon* (1619) 2 Roll Rep 79.

4 *Forster v Taylor* (1811) 3 Camp 49.

5 *Brown v Doyle* (1788) 3 Camp 51n.

6 *Anon* (1619) 2 Roll Rep 79.

UPDATE

212 Claims against guests

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(8) INNKEEPERS' DUTIES, RIGHTS AND LIABILITIES ATTACHING TO CERTAIN HOTEL PROPRIETORS/(iii) Innkeepers' Remedies/213. Innkeeper's lien.

213. Innkeeper's lien.

The proprietor of a hotel, as an innkeeper¹, may detain, and thus has a lien² upon, any property, other than that excluded by statute³, brought by a guest⁴ into the hospitium⁵ of the inn in respect of the guest's unpaid bill⁶. He is not, however, entitled to detain the guest himself, nor to take clothes from his person⁷. A hotel proprietor who, as an innkeeper, retains a guest's goods under his lien is not bound to be more careful in keeping them than he would be of his own goods of the same kind⁸.

At common law, the innkeeper's lien extended to all property a guest brought to the inn⁹, including his horse¹⁰ and vehicle, and the harness and other equipment¹¹. The extent of the innkeeper's lien has been restricted by statute¹²; it now extends only to those goods of a guest in respect of which the hotel proprietor is strictly liable in the event of their being lost or damaged¹³. Without prejudice to any other right¹⁴ of his with respect to it, the proprietor of a hotel has not, as an innkeeper, any lien on any vehicle or any property left therein or any horse or other live animal or its harness or other equipment¹⁵.

Apart from any special circumstances, the undertaking by the guest to the hotel proprietor is a single undertaking to pay for the things that are supplied to him while he is a guest, and a single lien exists as to all that the guest brings with him, other than property excluded from lien¹⁶, for the price of the guest's personal food and lodging¹⁷. The lien does not, however, extend to amounts lent to or disbursed for the guest by the hotel proprietor¹⁸ nor, probably, to a charge for damage caused by the guest¹⁹. Again, if a traveller leaves his goods at the hotel but resides elsewhere and requests the hotel proprietor to receive a guest at his expense, the hotel proprietor, as an innkeeper, has no lien on the traveller's goods for payment of the guest's board or the charge for keeping the goods²⁰.

An article not brought by the guest to the hotel at the time of his coming as a guest, but sent in by the owner on hire for the guest's temporary use, to the knowledge of the hotel proprietor, is not subject to the innkeeper's lien, for to allow a lien in such circumstances would be contrary to good faith²¹. Similarly, a hotel proprietor has no lien upon articles received, not as an innkeeper, but upon some distinct contract such as a contract for security for the loan of money²².

The innkeeper's lien extends to all the goods, other than those excluded by statute, which the guest brings with him²³, whether or not deposited with the hotel proprietor, as security for his bill²⁴, even though they do not in fact belong to the guest²⁵, and are brought without the owner's knowledge²⁶, or have been stolen or otherwise wrongfully obtained²⁷, provided the hotel proprietor was ignorant of the fact when he received them²⁸. The hotel proprietor can assert his lien against the true owner as well as against the guest²⁹. Consequently, hired goods brought with him by the guest and received by the hotel proprietor are also subject to the lien³⁰.

The innkeeper's lien exists only so long as the hotel proprietor, as an innkeeper, retains possession or control of the goods³¹. If he allows them to be taken out of his possession before the guest has paid his bill, he cannot exercise his lien over the goods in respect of that particular debt if the guest happens to return to the hotel at a subsequent date³². Provided the goods are brought to the hotel by a guest, the lien will continue so long as the person bringing them retains his character of guest³³. Possession is a question of fact³⁴, but possession is given up if the hotel proprietor allows the sheriff to seize the goods without asserting his lien³⁵. If,

however, the goods are fraudulently taken out of the hotel proprietor's custody in order to destroy his lien, he has a right to repossess himself of them³⁶, and where he sends goods off his premises preparatory to their sale, he does not thereby lose his lien until the sale is effected³⁷.

The cost of storing goods retained under an innkeeper's lien cannot be charged by the hotel proprietor as innkeeper, as the goods are stored for the benefit of the innkeeper, and not for the benefit of the guest³⁸. If such an extra charge is made and is paid under protest, it may be recovered³⁹.

A hotel proprietor who, as an innkeeper, accepts security from his guest for the payment of hotel charges does not thereby lose or waive his lien upon the guest's goods for the amount of the charges unless there is something in the nature of the security, or in the circumstances under which it is taken, which is inconsistent with the existence or continuance of the lien, and therefore destructive of it⁴⁰. A lien may perhaps be waived if goods are claimed upon some other ground, and not upon the ground of a lien⁴¹.

1 As to innkeepers see PARA 184 text and notes 5-7.

2 This appears to be a general lien: see **LIEN** vol 68 (2008) PARA 817.

3 See the text and notes 12-15.

4 There is no lien where goods are deposited by someone not a guest: *Binns v Pigot* (1840) 9 C & P 208. As to the meaning of 'guest' see PARA 201 note 6.

5 As to the hospitium see PARA 198.

6 It seems that lien does not extend to a charge for damage caused by the guest: *Ferguson v Peterkin* 1953 SLT (Sh Ct) 91.

7 *Sunbolf v Alford* (1838) 3 M & W 248, overruling *Luton v Bigg* (1691) Skin 291, sub nom *Newton v Trigg* (1691) 1 Show 268.

8 *Angus v McLachlan* (1883) 23 ChD 330.

9 *Sunbolf v Alford* (1838) 3 M & W 248.

10 At common law the innkeeper was bound to feed the horse (*Scarfe v Morgan* (1838) 4 M & W 270) and even if a guest forbade him to feed it at a time when he had a lien on it he was entitled to do so and to charge the guest with its food (*Gilbert v Berkeley* (1696) Holt KB 366).

11 *Anon* (1465) YB 5 Edw 4, fo 2, pl 20 per Haydon; 2 Roll Abr 85; *Watbroke v Griffith* (1609) Moore KB 876; *Luton v Bigg* (1691) Skin 291, sub nom *Newton v Trigg* (1691) 1 Show 268; *Scarfe v Morgan* (1838) 4 M & W 270; *Chapman v Allen* (1632) Cro Car 271; *Chase v Westmore* (1816) 5 M & S 180; *Mulliner v Florence* (1878) 3 QBD 484 at 493, CA, per Cotton LJ; *Turrill v Crawley* (1849) 13 QB 197; *Chesham Automobile Supply Ltd v Beresford Hotel (Birchington) Ltd* (1913) 29 TLR 584. The lien was strictly confined to innkeepers, and did not extend to livery stable keepers: *Judson v Etheridge* (1833) 1 Cr & M 743; *Orchard v Rackstraw* (1850) 9 CB 698.

12 See the text to note 15.

13 As to the nature of the liability see PARA 197 et seq. As to property excepted from strict liability see PARA 202.

14 Eg as a bailee: see **BAILMENT** vol 3(1) (2005 Reissue) PARAS 48-49. As to the power of sale see PARA 214.

15 Hotel Proprietors Act 1956 s 2(2); see PARA 202. The majority of cases cited in reference to the innkeeper's right of lien concerned the exercise of the right in respect of a guest's horse or vehicle. The statutory exclusion of these from lien does not affect the validity of these authorities upon the points for which they are cited.

16 As to property excluded from lien see the text and notes 12-15.

17 *Mulliner v Florence* (1878) 3 QBD 484, CA. At one time a different view of the law seems to have been taken. In Bac Abr, Inns and Innkeepers (D), it is said: 'If a horse be committed to an innkeeper, it may be detained for the meat of the horse, but not for the meat of the guest; for the chattels are only in the custody of

the law for the debt that arises from the thing itself, and not from any other debt due from the same party etc'. In *Turrill v Crawley* (1849) 13 QB 197 the judges expressly left this question open. Horses and certain other property are now excluded by statute from lien: see the text and note 15.

18 *Chesham Automobile Supply Ltd v Beresford Hotel (Birchington) Ltd* (1913) 29 TLR 584.

19 See *Ferguson v Peterkin* 1953 SLT (Sh Ct) 91.

20 *Smith v Dearlove* (1818) 6 CB 132.

21 *Broadwood v Granara* (1854) 10 Exch 417 (piano).

22 *Matsuda v Waldorf Hotel Co Ltd* (1910) 27 TLR 153 (stolen railway tickets handed by guest to innkeeper); *Binns v Pigot* (1840) 9 C & P 208 (property suspected of having been stolen deposited with innkeeper by police). See also *Smith v Dearlove* (1848) 6 CB 132.

23 *Snead v Watkins* (1856) 26 LJCP 57; *Threfall v Borwick* (1875) LR 10 QB 210, Ex Ch; *Mulliner v Florence* (1878) 3 QBD 484, CA; *Gordon v Silber* (1890) 25 QBD 491.

24 *Marsh v Police Comr* [1945] KB 43, [1944] 2 All ER 392, CA (stolen ring).

25 *Skipwith v --* (1611) 1 Bulst 170 (court divided); *Robinson v Walter* (1617) 3 Bulst 269; *Turrill v Crawley* (1849) 13 QB 197; *Snead v Watkins* (1856) 26 LJCP 57; *Threfall v Borwick* (1875) LR 10 QB 210, Ex Ch; *Mulliner v Florence* (1878) 3 QBD 484, CA; *Gordon v Silber* (1890) 25 QBD 491; cf *Allen v Smith* (1863) 1 New Rep 404 at 405; *Chesham Automobile Supply Ltd v Beresford Hotel (Birchington) Ltd* (1913) 29 TLR 584 (car lent under hiring agreement).

26 *Skipwith v --* (1611) 1 Bulst 170; *Robinson v Walter* (1617) 3 Bulst 269.

27 *Stirt v Drungold* (1617) 3 Bulst 289; *Mulliner v Florence* (1878) 3 QBD 484, CA; *Gordon v Silber* (1890) 25 QBD 491; and see *Marsh v Police Comr* [1945] KB 43, [1944] 2 All ER 392, CA.

28 *Johnson v Hill* (1822) 3 Stark 172.

29 See the cases cited in notes 23-27.

30 *Threfall v Borwick* (1875) LR 10 QB 210, Ex Ch (piano). This was a case of simple hire, but it is submitted that the same principle applies to hire purchase. The position is otherwise if the hired goods are brought or sent in after the guest's arrival: see the text and note 21.

31 *Jones v Pearle* (1723) 1 Stra 557; *Wilkins v Carmichael* (1779) 1 Doug KB 101 at 105 per Lord Mansfield; *Taylor v Robinson* (1818) 8 Taunt 648; *Jacobs v Latour* (1828) 5 Bing 130; *Bernal v Pim* (1835) 1 Gale 17 at 19 per Parke B; *Legg v Evans* (1840) 6 M & W 36; *Orchard v Rackstraw* (1850) 9 CB 698.

32 *Jones v Thurloe* (1723) 8 Mod Rep 172, sub nom *Jones v Pearle* (1723) 1 Stra 557.

33 *Allen v Smith* (1862) 12 CBNS 638; affd (1863) 9 Jur NS 1284, Ex Ch. As to the characteristics of a guest see PARA 201.

34 *Taylor v Robinson* (1818) 8 Taunt 648.

35 *Jacobs v Latour* (1828) 5 Bing 130; see *Legg v Evans* (1840) 6 M & W 36.

36 *Wallace v Woodgate* (1824) 1 C & P 575.

37 *Chesham Automobile Supply Ltd v Beresford Hotel (Birchington) Ltd* (1913) 29 TLR 584.

38 See *British Empire Shipping Co v Somes* (1858) EB & E 353 at 367, Ex Ch; affd sub nom *Somes v British Empire Shipping Co* (1860) 8 HL Cas 338.

39 *British Empire Shipping Co v Somes* (1858) EB & E 353, Ex Ch; affd sub nom *Somes v British Empire Shipping Co* (1860) 8 HL Cas 338.

40 *Angus v McLachlan* (1883) 23 ChD 330; *Cowell v Simpson* (1809) 16 Ves 275 at 280; *Raitt v Mitchell* (1815) 4 Camp 146; *Crawshay v Homfray* (1820) 4 B & Ald 50; *Matsuda v Waldorf Hotel Co Ltd* (1910) 27 TLR 153.

41 See *Boardman v Sill* (1808) 1 Camp 410n; and **LIEN** vol 68 (2008) PARA 852.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(8) INNKEEPERS' DUTIES, RIGHTS AND LIABILITIES ATTACHING TO CERTAIN HOTEL PROPRIETORS/(iii) Innkeepers' Remedies/214. Sale of guests' goods.

214. Sale of guests' goods.

Apart from the right of lien¹ exercisable by a hotel proprietor as an innkeeper², the landlord, proprietor, keeper or manager of any hotel, inn or licensed public house³ has the right absolutely to sell⁴ and dispose by public auction of any goods, chattels, carriages, motor vehicles, trailers⁵, horses, wares or merchandise which may have been deposited with him or left in the house he keeps, or in the coach house, stable, stable yard or other premises appurtenant or belonging to it, where the person depositing or leaving those goods or other articles is or becomes indebted to the innkeeper⁶ either for any board or lodging, or for the keep and expenses of any horse or other animal left with or standing at livery in the stables or fields occupied by the innkeeper⁷.

The debt for the payment of which a sale is made must not be any other or greater debt than the debt for which the goods or other articles could have been retained by the innkeeper under his lien⁸.

No sale of goods or other articles left at an inn may be made until after the goods have been for six weeks in the innkeeper's charge or custody, or in or upon his premises, without the debt due to him from the person leaving them having been paid or satisfied⁹.

At least one month before the sale the hotel proprietor, as innkeeper, or landlord, keeper or manager, must insert an advertisement in one London newspaper and one country newspaper circulating in the district where the goods or other articles were deposited or left, containing notice of the intended sale, and giving shortly a description of the goods and chattels intended to be sold, together with the name, if known, of the owner or person who deposited or left them¹⁰.

Out of the proceeds of a sale of goods or other articles left at an inn, the innkeeper may pay himself the amount of the debt due to him from the person who left the goods, together with the costs and expenses of the sale¹¹, and must then, on demand, pay to that person the surplus, if any, remaining of the proceeds of sale¹².

1 As to the lien see PARA 213.

2 As to innkeepers see PARA 184 text and notes 5-7.

3 Public houses which do not provide sleeping accommodation for guests if so required are not hotels within the meaning of the Hotel Proprietors Act 1956 s 1(3), and are therefore not inns to which the normal rights of an innkeeper, such as lien, attach: see s 1(1); and PARA 183.

4 At common law the innkeeper had no right to sell goods retained under a lien, even when the keeping of the goods, as in the case of a horse, occasioned considerable expense (*Thames Iron Works Co v Patent Derrick Co* (1860) 1 John & H 93), but there was a special custom as to the sale of a horse in London and in Exeter (*Moss v Townsend* (1612) 1 Bulst 207; *Gilbert v Berkeley* (1696) Holt KB 366; *Thames Iron Works Co v Patent Derrick Co*). The custom of London was that if a man left his horse at an inn in London and the horse there ate in hay and provender more than he was worth, the horse should be appraised by the innkeeper's next neighbour, and afterwards be sold for payment of the money there owing for him. But every horse was to be sold to satisfy the debt due on his own meat only: *Moss v Townsend*. The custom of London and Exeter is set out slightly differently in *Bac Abr, Inns and Innkeepers* (D). Where goods were deposited by way of security for a loan, a right of sale might be inferred: *Pothonier and Hodgson v Dawson* (1816) Holt NP 383.

5 'Carriages' in any Act includes motor vehicles and trailers: see the Road Traffic Act 1988 s 191.

6 In this context 'innkeeper' has a wider meaning than 'hotel proprietor' in the Hotel Proprietors Act 1956 s 1(1), (3): see PARA 184; and note 3.

7 Innkeepers Act 1878 s 1. This right of sale in respect of the guest's horses and carriages remains unaffected by the abolition of the right of lien in respect of them under the Hotel Proprietors Act 1956 s 2(2) (see PARA 213). As to the disposal of goods accepted by a bailee in the course of business for repair or other treatment and not collected when ready see **BAILMENT** vol 3(1) (2005 Reissue) PARA 80 et seq.

8 Innkeepers Act 1878 s 1 second proviso.

9 Innkeepers Act 1878 s 1 first proviso. Where a car had been left by a guest who failed to pay his hotel bill, and the proprietors of the hotel dispatched the car to London for sale before the expiry of the six weeks, but the sale was not to take place until after the six weeks was past, it was held that the proprietors had not lost their lien since they still retained control of the car: *Chesham Automobile Supply Ltd v Beresford Hotel (Birchington) Ltd* (1913) 29 TLR 584.

10 Innkeepers Act 1878 s 1 third proviso.

11 In *Chesham Automobile Supply Ltd v Beresford Hotel (Birchington) Ltd* (1913) 29 TLR 584, the hotel proprietor was held entitled to the cost of repairing a car left by a guest, as well as the cost of advertising and selling it.

12 Innkeepers Act 1878 s 1 first proviso.

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214-217 Sale of guests' goods ... Prohibition of unlawful discrimination when providing alcohol or other refreshments or providing entertainment

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(9) MISCELLANEOUS PROVISIONS RELATING TO LICENSED PREMISES AND ALCOHOL/(i) Provisions relating to Licensed Premises/215. Provision of civic restaurants.

(9) MISCELLANEOUS PROVISIONS RELATING TO LICENSED PREMISES AND ALCOHOL

(i) Provisions relating to Licensed Premises

215. Provision of civic restaurants.

Certain local authorities, known as civic restaurant authorities¹, may establish and carry on restaurants and otherwise provide for the supply to the public of meals and refreshments, and may carry on such activities as are reasonably incidental or ancillary to those activities².

A licence³ may not be granted in respect of any such restaurant established in premises forming part of, or used for the purposes of, any church, chapel or other place of religious worship or used for the purposes of any religious organisation, except with the consent of the incumbent, minister or other person in charge or, as the case may be, the consent of the religious organisation⁴. A civic restaurant authority is subject, in carrying on any activities under these provisions, to all enactments and rules of law relating thereto, including, in England and Wales, the Licensing Act 2003 and any other enactment relating to the sale of intoxicating liquor, in like manner as other persons carrying on the like activities⁵.

1 As to the meaning of 'civic restaurant authority' see **LOCAL GOVERNMENT** vol 69 (2009) PARA 599.

2 See the Civic Restaurants Act 1947 s 1(1), (3); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 599.

3 ie under the Licensing Act 2003: see PARA 27 et seq.

4 See the Civic Restaurants Act 1947 s 1(1) proviso (iv).

5 Civic Restaurants Act 1947 s 1(4) (amended by the Licensing Act 2003 Sch 6 para 18). Note that the substantive provisions of the Licensing Act 2003 refer to 'alcohol' (as to the meaning of which see PARA 30) and not 'intoxicating liquor'.

UPDATE

214-217 Sale of guests' goods ... Prohibition of unlawful discrimination when providing alcohol or other refreshments or providing entertainment

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

215-218 Provision of civic restaurants ... Imposition of charges on holders of premises licences or club premises certificates in alcohol disorder zones

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/2. ALCOHOL ETC AND ENTERTAINMENT LICENSING/(9) MISCELLANEOUS PROVISIONS RELATING TO LICENSED PREMISES AND ALCOHOL/(i) Provisions relating to Licensed Premises/216. Prohibition of smoking in enclosed or substantially enclosed areas of licensed premises.

216. Prohibition of smoking in enclosed or substantially enclosed areas of licensed premises.

The enclosed or substantially enclosed areas¹ of licensed premises are, like all such areas open to the public², to be smoke-free³. This is subject to an exception in the case of designated bedrooms⁴ in hotels, guest houses, inns, hostels or members' clubs⁵. A self-contained private dwelling on the premises (for example, the living accommodation of the landlord and his family) is also excepted⁶ but it is specifically provided that the power to provide for exceptions by regulations⁷ may not be used in order to make any wider exceptions in the case of premises in respect of which a premises licence under the Licensing Act 2003⁸ authorising the sale by retail of alcohol⁹ for consumption on the premises, or a club premises certificate¹⁰, has effect¹¹.

It is the duty of any person who occupies or is concerned in the management of smoke-free premises to make sure that no-smoking signs complying with the statutory requirements are displayed in those premises¹². Failure to comply with this duty is an offence punishable with a fine¹³. It is also an offence punishable with a fine to smoke in a smoke-free place¹⁴.

It is the duty of any person who controls or is concerned in the management of smoke-free premises to cause a person smoking there¹⁵ to stop smoking¹⁶. A person who fails to comply with this duty commits an offence punishable with a fine¹⁷; but it is a defence for a person charged with such an offence to show:

- 655 (1) that he took reasonable steps to cause the person in question to stop smoking; or
- 656 (2) that he did not know, and could not reasonably have been expected to know, that the person in question was smoking; or
- 657 (3) that on other grounds it was reasonable for him not to comply with the duty¹⁸.

These provisions are discussed in more detail elsewhere in this work¹⁹.

1 For these purposes, premises in England are enclosed if they (1) have a ceiling or roof; and (2) except for doors, windows and passageways, are wholly enclosed either permanently or temporarily; and they are substantially enclosed if they have a ceiling or roof but there is (a) an opening in the walls; or (b) an aggregate area of openings in the walls, which is less than half of the area of the walls, including other structures that serve the purpose of walls and constitute the perimeter of the premises: Smoke-free (Premises and Enforcement) Regulations 2006, SI 2006/3368, reg 2(1), (2). In determining the area of an opening or an aggregate area of openings for these purposes, no account is to be taken of openings in which there are doors, windows or other fittings that can be opened or shut: reg 2(3). 'Roof' includes any fixed or movable structure or device which is capable of covering all or part of the premises as a roof, including, eg, a canvas awning: reg 2(4). For the equivalent definitions applying in Wales see the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787, reg 2.

2 For these purposes, premises are 'open to the public' if the public or a section of the public has access to them, whether by invitation or not, and whether on payment or not: Health Act 2006 s 2(7).

3 See the Health Act 2006 s 2(1). As licensed premises are also places of work, the relevant areas in them are to be smoke-free at all times: see s 2(2). For these purposes, 'smoking' refers to smoking tobacco or anything which contains tobacco, or smoking any other substance, and smoking includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked; and 'smoke' and other related expressions are to be read accordingly: s 1(2), (3).

- 4 As to the meaning of 'designated bedroom' see PARA 191 note 6.
- 5 See the Smoke-free (Exemptions and Vehicles) Regulations 2007, SI 2007/765, reg 4(1); the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787, reg 3(4)(c).
- 6 See the Smoke-free (Exemptions and Vehicles) Regulations 2007, SI 2007/765, reg 3; the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787, reg 3(1).
- 7 le the Health Act 2006 s 3(1): see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 251.
- 8 As to premises licences see PARA 53 et seq.
- 9 As to the meanings of 'sale by retail' and 'alcohol' for the purposes of the Licensing Act 2003 see PARA 30.
- 10 As to the meaning of 'club premises certificate' see PARA 85.
- 11 See the Health Act 2006 s 3(3), (4); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 251.
- 12 See the Health Act 2006 s 6(1). For the prescribed form of the notices in England see the Smoke-free (Signs) Regulations 2007, SI 2007/923, reg 2; and for the prescribed form of the notices in Wales see the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787, reg 5.
- 13 Health Act 2006 s 6(5), (8). The penalty for such an offence is, in England and Wales, a fine not exceeding level 3 on the standard scale: Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/761, regs 1(2), 2(1). As to the standard scale see PARA 17 note 21. Alternatively, a fixed penalty notice may be issued, in which case the amount of the penalty is £200, or £150 if payment is made before the end of the period for payment of the discounted amount: see the Health Act 2006 s 9, Sch 1 paras 5, 7(1), 8; the Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/761, reg 4. The period for payment of the discounted amount is the period of 15 days beginning with the day on which the notice is given, unless the fifteenth day is not a working day: Health Act 2006 Sch 1 para 7(2). If the fifteenth day is not a working day, that period is the period beginning with the day on which the notice is given and ending immediately after the first working day following the fifteenth day: Sch 1 para 7(3). 'Working day' means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971: Health Act 2006 Sch 1 para 7(4).

It is a defence for a person charged with such an offence to show (1) that he did not know, and could not reasonably have been expected to know, that the premises were smoke-free; or (2) that he did not know, and could not reasonably have been expected to know, that no-smoking signs complying with the statutory requirements were not being displayed in accordance with those requirements; or (3) that on other grounds it was reasonable for him not to comply with the duty: s 6(6). If a person charged with such an offence relies on a defence in s 6(6), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not: s 6(7).
- 14 Health Act 2006 s 7(2), (6). The penalty for such an offence is, in England and Wales, a fine not exceeding level 3 on the standard scale: Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/761, regs 1(2), 2(2). Alternatively, a fixed penalty notice may be issued, in which case the amount of the penalty is £50, or £30 if payment is made before the end of the period for payment of the discounted amount (see note 13): see the Health Act 2006 Sch 1 paras 5, 7(1), 8; the Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/761, reg 5. As to exemptions for theatrical performers see PARA 240.

It is a defence for a person charged with such an offence to show that he did not know, and could not reasonably have been expected to know, that it was a smoke-free place: Health Act 2006 s 7(4). If a person charged with such an offence relies on a defence in s 7(4), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not: s 7(5).
- 15 le unless he is exempted because he is taking part in a theatrical performance: see PARA 240.
- 16 Health Act 2006 s 8(1), (2).
- 17 Health Act 2006 s 8(4), (7). The penalty for such an offence is, in England and Wales, a fine not exceeding level 4 on the standard scale: Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/761, regs 1(2), 2(3).

18 Health Act 2006 s 8(5). If a person charged with such an offence relies on a defence in s 8(5), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not: s 8(6).

19 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 250 et seq.

UPDATE

214-217 Sale of guests' goods ... Prohibition of unlawful discrimination when providing alcohol or other refreshments or providing entertainment

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

215-218 Provision of civic restaurants ... Imposition of charges on holders of premises licences or club premises certificates in alcohol disorder zones

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

216 Prohibition of smoking in enclosed or substantially enclosed areas of licensed premises

NOTES 13, 14, 17--For SI 2007/761 read SI 2007/764.

NOTES 14-16--As to the reasonableness of prosecution costs in proceedings under the 2006 Act ss 7(2), 8(4) see *Blows v Herefordshire DC* [2009] EWHC 666 (Admin), [2009] LLR 269, [2009] All ER (D) 163 (Mar), DC.

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217. Prohibition of unlawful discrimination when providing alcohol or other refreshments or providing entertainment.

The statutory prohibitions on unlawful discrimination against a person on the grounds of:

- 658 (1) colour, race, nationality, ethnic or national origin¹;
- 659 (2) sex²;
- 660 (3) gender reassignment³;
- 661 (4) pregnancy or maternity, in the case of a woman⁴;
- 662 (5) religion or belief⁵;
- 663 (6) disability in the form of physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities⁶; or
- 664 (7) sexual orientation, including a sexual orientation which he is thought to have⁷,

which have been discussed in the context of an innkeeper's right to refuse refreshment⁸ apply more generally to any such discrimination when providing facilities for entertainment, recreation or refreshment⁹.

1 See the Race Relations Act 1976 ss 1(1), 3(1). Segregating a person from other persons on these grounds ranks as discrimination: s 1(2). See further **DISCRIMINATION** vol 13 (2007 Reissue) PARA 439 et seq.

2 See the Sex Discrimination Act 1975 ss 1(1), 2(1) (s 1(1) substituted by SI 2001/2660); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 344 et seq.

3 See the Sex Discrimination Act 1975 s 2A (added by SI 1999/1102; amended by SI 2008/963); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 348.

4 See the Sex Discrimination Act 1975 s 3B (added by SI 2008/963).

5 See the Equality Act 2006 s 44; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 691.

6 See the Disability Discrimination Act 1995 s 1(1); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 511 et seq.

7 See the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 3; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 753.

8 See PARA 193 text and notes 6-14.

9 See the Sex Discrimination Act 1975 s 29(1), (2)(e); the Race Relations Act 1976 s 20(1), (2)(e); the Equality Act 2006 s 46(1), (2)(d); the Disability Discrimination Act 1995 ss 19(1), (3)(f), 20; the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 4(1), (2)(d). As to the statutory duty to make reasonable adjustments to the physical features of premises in order to accommodate persons with a disability see PARA 192 text and note 19.

A complaint of racial discrimination may be brought by a barmaid against her employer if she is dismissed for refusing to obey an order not to serve ethnic minority customers: *Zarczynska v Levy* [1979] 1 All ER 814, [1979] 1 WLR 125, EAT; followed in *Showboat Entertainment Centre Ltd v Owens* [1984] 1 All ER 836, [1984] 1 WLR

384, EAT (manager of amusement centre dismissed because of his refusal to carry out a racially discriminatory instruction to exclude young black people).

UPDATE

214-217 Sale of guests' goods ... Prohibition of unlawful discrimination when providing alcohol or other refreshments or providing entertainment

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

215-218 Provision of civic restaurants ... Imposition of charges on holders of premises licences or club premises certificates in alcohol disorder zones

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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218. Imposition of charges on holders of premises licences or club premises certificates in alcohol disorder zones.

The Secretary of State¹ may, by regulations, make provision:

- 665 (1) for the imposition by a local authority² of charges to be paid to the authority for each month by:
 - 29 43. (a) persons who for the whole or a part of that month held premises licences³ authorising the use of premises⁴ in alcohol disorder zones⁵ in the authority's area for the sale of alcohol by retail⁶; and
 - 44. (b) clubs which for the whole or a part of that month were authorised by virtue of club premises certificates⁷ to use premises in such zones for the supply of alcohol to members or guests⁸;
- 30 666 (2) requiring a local authority that imposes charges by reference to an alcohol disorder zone to use sums received by them in respect of those charges for the purposes specified in or determined under the regulations⁹;
- 667 (3) about:
 - 31 45. (a) the payment, collection and enforcement of charges imposed in accordance with regulations under these provisions;
 - 46. (b) the determination of questions about liability for such charges, about the rate of charge applicable in relation to a particular set of premises or about compliance with the conditions of any exemption or discount; and
 - 47. (c) appeals against decisions determining such questions¹⁰.
- 32

In the exercise of these powers, the Secretary of State has made the Local Authorities (Alcohol Disorder Zones) Regulations 2008¹¹, which came into force on 5 June 2008¹² and allow local authorities to designate localities as alcohol disorder zones where there has been a nuisance or annoyance to members of the public, or disorder, where the nuisance, annoyance or disorder is associated with the consumption of alcohol supplied at premises in that locality and where there is likely be a repetition of that nuisance, annoyance or disorder.

¹ The Secretary of State here concerned is the Home Secretary. As to the Secretary of State generally see PARA 2.

² For these purposes, 'local authority' means (1) a district council; (2) a county council for an area for which there are no district councils; (3) a London borough council; (4) the Common Council of the City of London in its capacity as a local authority; (5) the Council of the Isles of Scilly; (6) a county council or a county borough council in Wales: Violent Crime Reduction Act 2006 s 20(1).

³ As to the meaning of 'premises licence' see PARA 53 note 1 (definition applied by the Violent Crime Reduction Act 2006 s 20(2)).

4 As to the meaning of 'premises' see PARA 27 note 12 (definition applied by the Violent Crime Reduction Act 2006 s 20(2)).

5 'Alcohol disorder zone' means a locality designated as such a zone under the Violent Crime Reduction Act 2006 s 16: s 20(1). As to the designation of such zones see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

6 As to the meanings of 'sale by retail' and 'alcohol' see PARA 30 (definitions applied by the Violent Crime Reduction Act 2006 s 20(2)).

7 As to club premises certificates see PARA 85 et seq.

8 Violent Crime Reduction Act 2006 s 15(1); and see further note 9.

9 Violent Crime Reduction Act 2006 s 15(2). The rates of charges fixed under s 15 must be such as the Secretary of State considers appropriate for securing that the funds that he considers appropriate are available (after the costs of the scheme have been met from the charges) to be used for any purposes specified or determined under s 15(2): s 15(3). In s 15(3) the reference, in relation to any charges, to the costs of the scheme is a reference to the costs of the arrangements made for or in connection with the imposition, collection and recovery of those charges: s 15(10).

Regulations under s 15 fixing the rates of charges may fix different rates for different descriptions of local authority, different descriptions of alcohol disorder zones and different descriptions of premises and may do so either (1) by setting out the different rates in the regulations; or (2) by specifying the methods of computing the different rates in the regulations: s 15(4). Regulations under s 15 fixing such rates may authorise or require a local authority to grant discounts from the charges and must provide for exemptions from the charges for the purpose mentioned in s 15(6): s 15(5). The only exemptions from charges for which regulations under s 15 may provide are exemptions for the purpose of securing that charges are not imposed in relation to premises where (a) the principal use to which the premises are put does not consist in or include the sale or supply of alcohol; and (b) the availability of alcohol on those premises is not the main reason, or one of the main reasons, why individuals enter or remain on those premises (whether generally or at particular times of the day or on particular days of the week, or both): s 15(6). Regulations providing for a discount or exemption from charges may make a discount or exemption subject to compliance with conditions which are either set out in the regulations or are specified by the local authority in accordance with provision made under the regulations; and those conditions may include conditions requiring approvals to be given in respect of premises by such persons, and in accordance with such scheme, as may be provided for in the regulations: s 15(7).

10 Violent Crime Reduction Act 2006 s 15(8). Such regulations may include provision (1) for interest to be charged at such rate and in such manner as may be specified in or determined under the regulations on charges that are overdue; and (2) for the suspension of premises licences and club premises certificates for non-payment of a charge: s 15(9).

11 See the Local Authorities (Alcohol Disorder Zones) Regulations 2008, SI 2008/1430; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

12 Local Authorities (Alcohol Disorder Zones) Regulations 2008, SI 2008/1430, reg 1. As to proposal and consultation where a local authority is considering the designation of an alcohol disorder zone see regs 4-6; as to the action plan that must be made before a locality is designated as an alcohol disorder zone see regs 7-8; and as to the procedure for the designation of an alcohol disorder zone and for the imposition of charges see regs 9-21. As to the use to which charges paid to a local authority can be put see reg 11; as to exemptions and discounts to the charges see regs 12, 13; as to the method of computing the charges to be levied and how those charges should be allocated see regs 14-16. The local authority is required to issue each licence holder in an alcohol disorder zone with a statement of charge: see reg 17. As to collection of charges see reg 18; as to what is to happen if charges are not paid on time see reg 19; and as to suspension of a premises licence for non-payment of an alcohol disorder zone charge see reg 20. As to payment to the chief officer of police and to the British Transport Police Authority see reg 21; as to review of alcohol disorder zones see regs 22, 23; and for miscellaneous provisions see regs 24-26. See further **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

UPDATE

215-218 Provision of civic restaurants ... Imposition of charges on holders of premises licences or club premises certificates in alcohol disorder zones

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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(ii) Provisions relating to the Labelling or Advertising of Alcohol

219. Labelling of alcoholic drinks.

Alcoholic drinks, as all food, must be marked or labelled with specified information¹. This requirement does not apply to wines or grape musts², sparkling wines and aerated sparkling wines³, liqueur wines⁴, semi-sparkling wines and aerated semi-sparkling wines⁵, or any specified spirit drinks⁶. The specified information includes marking the food with the name or business name and address or registered office of either or both of the manufacturer or packer or a seller established within the European Community⁷, an appropriate durability indication⁸ and particulars of the place of origin or provenance of the food if failure to give such particulars might mislead a purchaser to a material degree as to the true origin of the food⁹.

In the case of prepacked¹⁰ alcoholic drinks other than Community controlled wine¹¹, every drink with an alcoholic strength by volume of more than 1.2 per cent must be marked or labelled with an indication of its alcoholic strength by volume in the specified form¹². Positive and negative tolerances are permitted in respect of the indication of alcoholic strength by volume¹³. In the case of any drink which has an alcoholic strength by volume of more than 1.2 per cent, the presence of any allergenic ingredient must be indicated, unless the name of the allergenic ingredient is specified in the name of the drink or in the list of ingredients, if any¹⁴.

A person who sells any food which is not marked or labelled in accordance with the above provisions is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale¹⁵.

The following words and descriptions must not be used in the labelling or advertising of a food, except in accordance with the appropriate conditions as indicated¹⁶:

- 668 (1) 'alcohol-free' must not be applied to any alcoholic drink from which the alcohol has been extracted, unless (a) the drink has an alcoholic strength by volume of not more than 0.05 per cent; and (b) the drink is marked or labelled with an indication of its maximum alcoholic strength¹⁷ or, in an appropriate case, with an indication that it contains no alcohol¹⁸;
- 669 (2) 'de-alcoholised' must not be applied to any drink, unless (a) the drink, being an alcoholic drink from which the alcohol has been extracted, has an alcoholic strength by volume of not more than 0.5 per cent; and (b) the drink is marked or labelled with an indication of its maximum alcoholic strength¹⁹ or, in an appropriate case, with an indication that it contains no alcohol²⁰;
- 670 (3) 'low alcohol', or any other word or description which implies that the drink being described is low in alcohol, must not be applied to any alcoholic drink unless (a) the drink has an alcoholic strength by volume of not more than 1.2 per cent; and (b) the drink is marked or labelled with an indication of its maximum alcoholic strength²¹;
- 671 (4) 'non-alcoholic' must not be used in conjunction with a name commonly associated with an alcoholic drink, except in the composite name 'non-alcoholic wine'²²;
- 672 (5) 'liqueur' must not be applied to any drink other than those specified²³; and

- 673 (6) 'tonic wine' must not be applied to any drink unless there appears in immediate proximity to the words 'tonic wine' the clear statement: 'the name 'tonic wine' does not imply health giving or medicinal properties'; and no recommendation as to consumption or dosage is to appear in the labelling or advertising of the drink²⁴.

The word 'wine' may be used in a composite name in the labelling or advertising of food for a drink which is not wine²⁵. However, 'wine' must not be used as part of a composite name which is likely to cause confusion with wine or table wine²⁶. Each word that forms part of the composite name must appear in lettering of the same type and colour and of such a height that the composite name is clearly distinguishable from other particulars²⁷.

The composite name 'non-alcoholic wine' must not be used except for a drink derived from unfermented grape juice which is intended exclusively for communion or sacramental use and which is described clearly in its labelling or advertising, as the case may be, as being exclusively for such use²⁸.

When the word 'wine' is used in a composite name for a drink which is derived from fruit other than grapes, that drink must be obtained by an alcoholic fermentation of that fruit²⁹.

It is an offence for any person to sell or advertise for sale any food in respect of which a claim is made, nutrition labelling is given or a description or a name is used in contravention of the above provisions³⁰. A person so doing is liable on summary conviction to a fine not exceeding level 5 on the standard scale³¹.

1 In accordance with the Food Labelling Regulations 1996, SI 1996/1499: see **FOOD** vol 18(2) (Reissue) PARA 371 et seq.

2 As to the meanings of 'wines' and 'grape musts' see the Food Labelling Regulations 1996, SI 1996/1499, reg 2(1); and **FOOD** vol 18(2) (Reissue) PARA 374.

3 As to the meanings of 'sparkling wines' and 'aerated sparkling wines' see the Food Labelling Regulations 1996, SI 1996/1499, reg 2(1); and **FOOD** vol 18(2) (Reissue) PARA 374.

4 As to the meaning of 'liqueur wines' see the Food Labelling Regulations 1996, SI 1996/1499, reg 2(1); and **FOOD** vol 18(2) (Reissue) PARA 374.

5 As to the meanings of 'semi-sparkling wines' and 'aerated semi-sparkling wines' see the Food Labelling Regulations 1996, SI 1996/1499, reg 2(1); and **FOOD** vol 18(2) (Reissue) PARA 374.

6 See the Food Labelling Regulations 1996, SI 1996/1499, reg 4(2)(h)-(k); and **FOOD** vol 18(2) (Reissue) PARA 374.

7 See the Food Labelling Regulations 1996, SI 1996/1499, reg 5(e); and **FOOD** vol 18(2) (Reissue) PARA 388.

8 Wine, liqueur wine, sparkling wine, aromatised wine and any similar drink obtained from fruit other than grapes, any drink made from grape or grape musts and coming within the specified codes, any drink with an alcoholic strength by volume of 10% or more, or any alcoholic drink sold in a container containing more than 5 litres and intended for supply to catering establishments, need not be marked or labelled with an appropriate durability indication: see the Food Labelling Regulations 1996, SI 1996/1499, reg 22. For the prescribed form of durability indication for those alcoholic drinks not falling within these exceptions see reg 20; and **FOOD** vol 18(2) (Reissue) PARA 385.

9 See the Food Labelling Regulations 1996, SI 1996/1499, reg 5(f); and **FOOD** vol 18(2) (Reissue) PARA 389. Consideration should particularly be given to declaring the place of origin when the name of the place or country appears as part of the name of the food, its trade, brand or fancy name or pictorial representation: see **FOOD** vol 18(2) (Reissue) PARA 389.

10 As to the meaning of 'prepacked' see the Food Labelling Regulations 1996, SI 1996/1499, reg 2(1); and **FOOD** vol 18(2) (Reissue) PARA 380.

- 11 As to 'Community controlled wine' see the Food Labelling Regulations 1996, SI 1996/1499, reg 2(1); and **FOOD** vol 18(2) (Reissue) PARA 397.
- 12 Food Labelling Regulations 1996, SI 1996/1499, reg 30(1). The strength must be shown as a figure to not more than one decimal place (which may be preceded by the word 'alcohol' or by the abbreviation 'alc') followed by the symbol '% vol': reg 30(1).
- 13 Food Labelling Regulations 1996, SI 1996/1499, reg 30(2). Tolerances must be as specified in reg 30(2), Sch 5, expressed in absolute value: see reg 30(2). For these purposes the alcoholic strength of any drink is determined at 20°C: reg 30(3).
- 14 See the Food Labelling Regulations 1996, SI 1996/1499, reg 34B(2) (added in relation to England by SI 2004/2824 and (subject to minor variation) in relation to Wales by SI 2004/3022); and **FOOD**. As to allergenic ingredients see Sch AA1 (as so added).
- 15 See the Food Labelling Regulations 1996, SI 1996/1499, reg 44; and **FOOD** vol 18(2) (Reissue) PARA 411. As to the standard scale see PARA 17 note 21.
- 16 See the Food Labelling Regulations 1996, SI 1996/1499, reg 42(1), Sch 8 Pt I; and **FOOD** vol 18(2) (Reissue) PARA 409.
- 17 In one of the forms specified in the Food Labelling Regulations 1996, SI 1996/1499, reg 30(1) (see note 12), immediately preceded by the words 'not more than': see Sch 8; and **FOOD** vol 18(2) (Reissue) PARA 409.
- 18 See the Food Labelling Regulations 1996, SI 1996/1499, Sch 8 Pt I.
- 19 See note 17.
- 20 See note 18.
- 21 See notes 17-18.
- 22 See note 18. The composite name must be used in accordance with reg 43: see Sch 8 Pt I; and **FOOD** vol 18(2) (Reissue) PARA 409.
- 23 See note 18. The name 'liqueur' is not to be applied to any drink other than one so qualifying under the definition of liqueur contained in EC Council Regulation 1576/89 (OJ L160, 12.6.89, p 1), art 1.4(r) (repealed: see now European Parliament and EC Council Regulation 110/2008 (OJ L39, 13.2.2008, p 16, Annex II para 32): Food Labelling Regulations 1996, SI 1996/1499, Sch 8 Pt I.
- 24 See note 18.
- 25 See the Food Labelling Regulations 1996, SI 1996/1499, reg 43(1); and **FOOD** vol 18(2) (Reissue) PARA 376.
- 26 See the Food Labelling Regulations 1996, SI 1996/1499, reg 43(2); and **FOOD** vol 18(2) (Reissue) PARA 376.
- 27 See the Food Labelling Regulations 1996, SI 1996/1499, reg 43(3); and **FOOD** vol 18(2) (Reissue) PARA 376.
- 28 See the Food Labelling Regulations 1996, SI 1996/1499, reg 43(4); and **FOOD** vol 18(2) (Reissue) PARA 376.
- 29 See the Food Labelling Regulations 1996, SI 1996/1499, reg 43(5); and **FOOD** vol 18(2) (Reissue) PARA 376.
- 30 See the Food Labelling Regulations 1996, SI 1996/1499, reg 44(1)(b); and **FOOD** vol 18(2) (Reissue) PARA 411.
- 31 See the Food Labelling Regulations 1996, SI 1996/1499, reg 44(1); and **FOOD** vol 18(2) (Reissue) PARA 411.

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220. Offences relating to measure etc.

Intoxicating liquor must only be sold in accordance with the provisions relating to the weights and measures of intoxicating liquor¹. Any person guilty of an offence under those provisions is liable on summary conviction to a fine².

Prices of drink must be indicated at premises where drink is offered for consumption on those premises³.

1 In accordance with the Weights and Measures (Intoxicating Liquor) Order 1988, SI 1988/2039: see **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 160 et seq.

2 See the Weights and Measures (Intoxicating Liquor) Order 1988, SI 1988/2039, art 7(1) (amended by SI 1990/1550); and **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 160 et seq. The fine must not exceed £2,000: see art 7(2).

3 See the Price Marking (Food and Drink Services) Order 2003, SI 2003/2253, art 4; and **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 14.

UPDATE

220 Offences relating to measure etc

NOTE 2--SI 1988/2039 art 7(1) further amended: SI 2009/663.

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221. Excise licences.

The principal enactment dealing with duties on alcoholic liquors and the related controls on manufacture, by way of excise licences, is the Alcoholic Liquor Duties Act 1979¹. It provides that the alcoholic liquors which are subject to excise duty are spirits², beer³, wine⁴, made-wine⁵ and cider⁶ (including perry), and imposes the charge and rate of excise duty on those alcoholic liquors⁷.

Excise licences are manufacturers' licences or wholesale dealers' licences, but both may be of different kinds⁸. The grant, duration and transfer of, and disqualification for holding, excise licences are discussed elsewhere in this work⁹.

Different kinds of excise licences are required to be held in the following circumstances:

- 674 (1) a distillers' licence (granted by the Commissioners for Revenue and Customs) is required for the manufacture of spirits¹⁰;
- 675 (2) an excise licence must be held by rectifiers or compounders of spirits¹¹;
- 676 (3) a person who produces beer on any premises¹² must be registered with the Commissioners for Revenue and Customs in respect of those premises¹³; and
- 677 (4) producers of wine or made-wine for sale must hold an excise licence in respect of their premises¹⁴.

No excise licence is required for sale by retail¹⁵.

A maker of cider or perry¹⁶ does not require an excise licence, but if he makes it for sale he must register his premises with the Commissioners for Revenue and Customs unless he is exempt¹⁷.

1 As to excise licences see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 622 et seq.

2 As to the meaning of 'spirits' see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 400.

3 As to the meaning of 'beer' see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 401.

4 As to the meaning of 'wine' see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 402.

5 As to the meaning of 'made-wine' see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 403.

6 As to the meaning of 'cider' see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 404.

7 See the Alcoholic Liquor Duties Act 1979; and **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 398 et seq.

8 As to details of the various kinds of excise licences see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 622 et seq.

9 See **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 622 et seq.

10 As to licences to manufacture spirits see the Alcoholic Liquor Duties Act 1979 s 12; and **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 418. As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

11 As to compounders' and rectifiers' licences see the Alcoholic Liquor Duties Act 1979 s 18; and **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 425.

12 The exceptions from the requirement to hold an excise licence are: (1) the production of beer only for the brewer's own domestic use or solely for the purposes of research or experiments in the production of beer (see the Alcoholic Liquor Duties Act 1979 s 47(2); and **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 465); (2) the production of wine or made-wine which satisfies certain conditions (see ss 54(4), 55(4), (4A), (5); and **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 485); and (3) making cider for sale, which requires no excise licence but, subject to any exemption provided for by any order made by the Treasury by statutory instrument, requires the maker to be registered with the Commissioners for Revenue and Customs (see s 62(2), (3); and **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 505). A maker of cider otherwise than for sale does not need to be registered or require an excise licence: see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 505.

13 As to registration of producers of beer see the Alcoholic Liquor Duties Act 1979 s 47; and **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 465.

14 As to producers' licences see the Alcoholic Liquor Duties Act 1979 ss 54(2), 55(2); and **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARAS 484-485.

15 As to sale by retail see PARA 30.

16 'Cider' includes perry: see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 404.

17 See note 12.

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3. PARTICULAR FORMS OF ENTERTAINMENT

(1) GENERAL PROVISIONS RELATING TO ENTERTAINMENT

222. Public provision of places of entertainment.

Both public and private Acts may enable public funds to be spent on the provision, maintenance and subvention of places of entertainment, including buildings¹ and open spaces².

Local authorities³ have general powers for providing entertainment of any nature or facilities for dancing, and these powers cover the provision of premises for such purposes⁴. This does not affect the provisions of any enactment by virtue of which a licence is required for the public performance of a stage play or the public exhibition of cinematograph films, or for boxing or wrestling entertainments or for public music or dancing, or for the sale of alcohol⁵.

Local authorities may also display pictures, cinematograph films or models, or hold exhibitions relating to local government matters⁶.

1 The National Theatre Acts 1949 and 1974 authorise payments by the Secretary of State to the Trustees of the Shakespeare Memorial Trust in respect of the cost of erecting and equipping a national theatre: see the National Theatre Act 1949 ss 1, 2 (amended by virtue of SI 1992/1311; the National Theatre Act 1949 s 1 also amended by the National Theatre Act 1974 s 1).

2 As to the provision of parks and open spaces etc by local authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 504 et seq.

3 'Local authority' means a county council, a district council, a London borough council or a parish council but, in relation to Wales, means a county council, a county borough council or a community council: Local Government Act 1972 s 270(1) (amended by the Local Government Act 1985 Sch 16 para 8, Sch 17; and the Local Government (Wales) Act 1994 s 1(5)). for the purposes set out in the text, 'local authority' includes the Common Council of the City of London: see the Local Government Act 1972 s 145(5). As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 51 et seq.

4 See the Local Government Act 1972 s 145(1), (2); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 596. As to the provision of information relating to matters affecting local government see s 142; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 545.

5 See the Local Government Act 1972 s 145(4) (amended by the Licensing Act 2003 Sch 6 paras 56, 59). As to such licences see PARA 53 et seq.

6 See the Local Government Act 1972 s 142(2)(c), (d); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 545.

UPDATE

222 Public provision of places of entertainment

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement

and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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223. Exemption for forces' entertainments.

So much of any Act as operates to prohibit as respects particular days, or otherwise to restrict or regulate, the keeping, opening or using of premises for purposes of public entertainment or amusement¹ does not apply to the authorised use of any building at a camp, station or naval establishment, or of any ship, for entertainments or amusements under the direction and control of an officer or committee having official responsibility for those matters².

1 'Public entertainment or amusement' includes public dancing, singing or music, the public performance of stage plays and the giving of cinematograph exhibitions, including the keeping or storing of films in any building or ship used for cinematograph exhibitions: Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 Sch 3 para 1(2).

2 See the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 Sch 3 para 1(1) (amended by SI 1964/488).

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224. Development and planning permission.

The change of use of a building from one purpose to any other within the same general class does not involve development of the land¹ and therefore does not require planning permission. The relevant class is 'assembly and leisure' which covers: (1) a cinema; (2) a concert hall; (3) a bingo hall; (4) a dance hall; and (5) a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms².

A casino is not included within the relevant class; but development consisting of a change of use of a building from use as a casino to a use for assembly and leisure is permitted development³.

1 See the Town and Country Planning Act 1990 s 55(2)(f); and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARAS 586-587.

2 See the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, Schedule, Class D2 (amended in relation to England by SI 2006/220), which has effect under the Town and Country Planning Act 1990 s 55(2) (f); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 235. Theatres, which were included in the same relevant class in the Town and Country Planning (Use Classes) Order 1972, SI 1972/1385 (revoked), were excluded from any class in the Town and Country Planning (Use Classes) Order 1987, SI 1987/764. This reflects the special protection for theatres promoted by the Theatres Trust Act 1976 (see PARAS 21-22) and the consequent requirement in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(1), Table for consultation by planning authorities with the Theatres Trust before granting planning permission on land which includes a theatre: see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 475.

3 See the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 3, Class H (added by SI 2006/221); and **TOWN AND COUNTRY PLANNING**. As to casinos see further PARA 311.

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225. Queues and traffic.

A theatre queue may be a nuisance, and the persons causing the queue may be restrained by an injunction¹. In the neighbourhood of theatres and other places of public resort, powers of control by the police over traffic are available to prevent obstruction².

¹ *Barber v Penley* [1893] 2 Ch 447; *Lyons, Sons & Co v Gulliver* [1914] 1 Ch 631, CA. See also **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 330; **NUISANCE** vol 78 (2010) PARA 198.

² See **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 227.

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226. Building regulation.

Besides being subject to the general legislation relating to the construction of buildings¹, any theatre, hall or other building used as a place of public resort is required to be provided with satisfactory means of ingress and egress²; and any place of public entertainment may be required to be provided with reasonable sanitary appliances, suitably positioned³.

1 As to this legislation see generally **BUILDING**; and as to the disapplication of certain of its provisions in relation to inner London see **BUILDING** vol 4(2) (2002 Reissue) PARA 303.

2 As to ingress and egress at places of public resort see the Building Act 1984 s 24; and **BUILDING** vol 4(2) (2002 Reissue) PARAS 336, 393.

3 As to the provision of sanitary appliances see the Local Government (Miscellaneous Provisions) Act 1976 s 20; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 990.

UPDATE

226-230 Building regulation ... Safety, health and employment of children

Certain functions under provisions mentioned in these paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

226 Building regulation

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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227. Factory legislation.

Premises in which dresses, scenery or properties are made, adapted or repaired incidentally to the production, exhibition or presentation, by way of trade or for the purposes of gain, of cinematograph films or theatrical performances, not being a stage or dressing room of a theatre in which only occasional adaptations or repairs are made, are factories for the purposes of the factories legislation¹. Premises in which the production of cinematograph films is carried on by way of trade or for purposes of gain are also factories for that purpose, but employment at those premises of theatrical performers and attendants on them is not deemed to be employment in a factory².

1 See the Factories Act 1961 s 175(2)(h); and **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 319.

2 See the Factories Act 1961 s 175(2)(l); and note 1.

UPDATE

226-230 Building regulation ... Safety, health and employment of children

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(1) GENERAL PROVISIONS RELATING TO ENTERTAINMENT/228. Criminal liability.

228. Criminal liability.

In so far as any entertainment or performance involves contempt of court¹ or an offence against public decency or morality² or against public order³ or an incitement to crime (including a breach of the peace)⁴, or contravenes the law as to obscenity⁵, sedition⁶ or blasphemy⁷, it falls within the scope of the criminal law⁸.

1 See *R v Williams* (1823) 2 LJOSKB 30, where a theatrical exhibition of the incidents of an alleged murder, staged pending the trial of the accused, was held to be an offence against public justice. See also *R v Gilham* (1828) Mood & M 165 (where an exhibition of a model of a prisoner awaiting trial was held not to be a contempt of court); and **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 409.

2 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 67 et seq, 764.

3 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 370 et seq.

4 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 65; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 930.

5 See the Obscene Publications Act 1959 s 1(3)(b); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 748. As to theatrical performances see the Theatres Act 1968 s 2; and PARA 246. As to obscene publications generally see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 747 et seq.

6 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 370 et seq.

7 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 826.

8 As to offences with regard to plays see PARA 246 et seq.

UPDATE

226-230 Building regulation ... Safety, health and employment of children

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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229. Protection of animals.

For the protection of animals from ill-treatment, persons who exhibit or train performing animals must be registered with the local authority¹. The exhibition of films whose organisation or direction involved the cruel infliction of pain or terror on any animal or the cruel goading of any animal to fury is prohibited², as is the supply of an unclassified video work which to any significant extent depicts the mutilation or torture of, or other acts of gross violence towards, animals³. Certain methods of killing or taking wild birds are also prohibited⁴, as is organised animal fighting as a form of entertainment⁵. Subject to certain statutory exemptions⁶, a person commits an offence if he hunts a wild mammal with a dog⁷.

1 See the Performing Animals (Regulation) Act 1925 s 1(1); and **ANIMALS** vol 2 (2008) PARA 873. See also the Animal Welfare Act 2006 s 13; and **ANIMALS** vol 2 (2008) PARAS 834-836.

2 See the Cinematograph Films (Animals) Act 1937 s 1; and **ANIMALS** vol 2 (2008) PARA 874.

3 See PARA 277.

4 See the Wildlife and Countryside Act 1981 s 5; and **ANIMALS** vol 2 (2008) PARA 1000.

5 See the Animal Welfare Act 2006 s 8; and **ANIMALS** vol 2 (2008) PARA 830.

6 As to exempt hunting see the Hunting Act 2004 s 2, Sch 1; and **ANIMALS** vol 2 (2008) PARAS 1034-1037.

7 See the Hunting Act 2004 s 1; and **ANIMALS** vol 2 (2008) PARA 1033.

UPDATE

226-230 Building regulation ... Safety, health and employment of children

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

229-230 Protection of animals, Safety, health and employment of children

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(1) GENERAL PROVISIONS RELATING TO ENTERTAINMENT/230. Safety, health and employment of children.

230. Safety, health and employment of children.

Where there is provided in any building (other than a private dwelling house)¹ an entertainment for children², or an entertainment at which the majority of the persons attending are children, then, if the number of children attending the entertainment exceeds 100, it is the duty of the person providing the entertainment to station and keep stationed wherever necessary a sufficient number of adult attendants, properly instructed as to their duties, to prevent more children or other persons being admitted to the building, or to any part of it, than the building or part can properly accommodate, and to control the movement of the children and other persons admitted while entering and leaving the building or any part of it, and to take all other reasonable precautions for the safety of the children³. Where the occupier of a building permits, for hire or reward, the building to be used for the purpose of an entertainment, he must take all reasonable steps to secure the observance of these provisions⁴. If any person on whom any such obligation is imposed fails to fulfil that obligation, he is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale⁵.

A constable⁶ or an officer authorised for the purposes by a licensing authority may enter any building in which he has reason to believe that such an entertainment is being, or is about to be, provided, with a view to seeing whether these provisions are carried into effect⁷.

Local authorities have power by notice to prohibit or restrict the admission of persons under the age of 16 to theatres and various other places of entertainment in order to prevent the spread of notifiable diseases⁸.

The employment of children in entertainments and the sending of children abroad for such employment is restricted, and such employment as is permitted generally requires a licence⁹.

1 See the Children and Young Persons Act 1933 s 12(6).

2 'Child' means a person under the age of 14 years: Children and Young Persons Act 1933 s 107(1).

3 Children and Young Persons Act 1933 s 12(1).

4 Children and Young Persons Act 1933 s 12(2).

5 Children and Young Persons Act 1933 s 12(3) (amended by the Criminal Justice Act 1982 ss 35, 37, 38, 46; the Licensing Act 2003 Sch 6 paras 12, 14(a), Sch 7). As to the standard scale see PARA 17 note 21.

The institution of proceedings under the Children and Young Persons Act 1933 s 12: (1) in the case of a building in respect of which a premises licence authorising the provision of regulated entertainment has effect, is the duty of the relevant licensing authority; and (2) in any other case, is the duty of the police authority: s 12(5) (amended by the Licensing Act 2003 Sch 6 paras 12, 14(b)). 'The relevant licensing authority', in relation to a building in respect of which a premises licence has effect, means the relevant licensing authority in relation to that building under the Licensing Act 2003 s 12 (see PARA 53 note 13): Children and Young Persons Act 1933 s 12(5A)(b) (added by the Licensing Act 2003 Sch 6 paras 12, 14(c)). As to the meaning of 'premises licence' see PARA 53 note 1; and as to the meaning of 'the provision of regulated entertainment' see PARA 31 (definitions applied by the Children and Young Persons Act 1933 s 12(5A)(a) (as so added)). As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

6 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

7 Children and Young Persons Act 1933 s 12(4).

8 See the Public Health (Control of Disease) Act 1984 s 23; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 906.

9 As to employment of children in entertainment generally see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 751 et seq.

UPDATE

226-230 Building regulation ... Safety, health and employment of children

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

229-230 Protection of animals, Safety, health and employment of children

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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231. Copyright in works and performances.

Copyright subsists in original literary¹, dramatic² and musical³ or artistic works⁴ and in sound recordings⁵, films⁶ or broadcasts⁷. A ballet may also be the subject matter of copyright as a composite work, the elements of which are the music, the story, the choreography, the scenery and the costumes⁸. There are various restricted acts⁹ which constitute infringements of copyright. These include the performance¹⁰, showing or playing of a literary, dramatic or musical work in public¹¹, and permitting a public place of entertainment to be used for an infringing performance¹².

1 As to the meaning of 'literary work' see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 67.

2 As to the meaning of 'dramatic work' see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 73.

3 As to the meaning of 'musical work' see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 73.

4 See the Copyright, Designs and Patents Act 1988 s 1(1)(a); and **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 57. As to the meaning of 'artistic work' see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 75. Copyright does not subsist in a literary, dramatic or musical work unless and until it is recorded, in writing or otherwise (s 3(2)) and it is immaterial for these purposes whether the work is recorded by or with the permission of the author (s 3(3)). See **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARAS 66-68, 71-73. It is not just the words that can be the subject of the copyright but also the dramatic incidents created: see *Rees v Melville* (1914) MacG Cop Cas (1911-16) 168, CA.

5 As to the meaning of 'sound recording' see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 84. Copyright does not subsist in a sound recording which is, or to the extent that it is, a copy taken from a previous sound recording: Copyright, Designs and Patents Act 1988 s 5A(2) (s 5A added by SI 1995/3297). See **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARAS 83-84.

6 As to the meaning of 'film' see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 86. See also note 5.

7 See the Copyright, Designs and Patents Act 1988 s 1(1)(b) (amended by SI 2003/2498); and **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 57. As to the meaning of 'broadcast' see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 89.

8 *Massine v de Basil* (1938) MacG Cop Cas (1936-45) 223.

9 As to acts restricted by copyright see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 311 et seq.

10 As to the meaning of 'performance' see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 324.

11 See the Copyright, Designs and Patents Act 1988 s 19; and **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 324.

12 See the Copyright, Designs and Patents Act 1988 s 25; and **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (Reissue) PARA 332.

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232. Passing off.

A claim may be brought for the passing off¹ of a work as the work of the claimant if its title or appearance is such as to lead members of the public to believe that they are purchasing or using a work of the claimant and injury is likely to accrue to the claimant. For instance, the owner of the copyright in a dramatic sketch can bring a claim for passing off against the producer of a film for representing to the public, contrary to the fact, that his film is a film version of the sketch, notwithstanding that there is no existing film of the sketch².

¹ As to passing off generally see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 14; **TRADE MARKS AND TRADE NAMES** vol 48 (2007 Reissue) PARA 304 et seq.

² See *Samuelson v Producers' Distributing Co Ltd* [1932] 1 Ch 201, CA (where the sketch and the film were showing at the same time); cf *O'Gorman v Paramount Film Service Ltd* [1937] 2 All ER 113, where there was no resemblance between the substance of a film bearing the same name as that of the plaintiff's play and the play in any case was not running at the same time.

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233. Defamation.

A performance, entertainment¹ or exhibition² may constitute, or contain matter which constitutes, actionable defamation³.

Publication of words⁴ in the course of a performance of a play⁵ is publication in permanent form for the purposes of the law of libel and slander (including the law of criminal libel so far as it relates to the publication of defamatory material)⁶, and the law of slander of title⁷. Thus a defamatory statement made in a play may be libellous. However, these provisions do not apply where the performance of a play is given on a domestic occasion in a private dwelling⁸ or for the purpose of a rehearsal⁹ or to enable¹⁰ (1) a record¹¹ or cinematograph film¹² to be made from or by means of the performance¹³; (2) the performance to be broadcast¹⁴; or (3) the performance to be included in a programme service¹⁵ other than a sound or television broadcasting service¹⁶.

Putting the names of performers on the bill in the wrong order is capable of being defamatory¹⁷.

1 See eg *Youssoupoff v Metro-Goldwyn-Mayer Pictures Ltd* (1934) 50 TLR 581 at 587, CA, where Slessor LJ said that speech in a film 'which is synchronised with the photographic reproduction and forms part of one complex common exhibition' could be libellous as being words in a permanent form.

2 See eg *Du Bost v Beresford* (1810) 2 Camp 511 (libellous picture at an exhibition); *Monson v Tussauds Ltd*, *Monson v Louis Tussaud* [1894] 1 QB 671, CA (libellous waxwork exhibit).

3 As to actionable libel see **LIBEL AND SLANDER** vol 28 (Reissue) PARA 11.

4 'Words' in this context includes pictures, visual images, gestures and other methods of signifying meaning: Theatres Act 1968 s 4(3); Defamation Act 1952 s 16(1).

5 As to the meaning of 'play' see PARA 244.

6 See the Theatres Act 1968 s 4(1). As to criminal libel see **LIBEL AND SLANDER** vol 28 (Reissue) PARAS 5, 288 et seq.

7 See the Theatres Act 1968 s 4(2); the Defamation Act 1952 s 3; and **LIBEL AND SLANDER** vol 28 (Reissue) PARA 274 et seq.

8 Theatres Act 1968 s 7(1).

9 Theatres Act 1968 s 7(2)(a).

10 Theatres Act 1968 s 7(2)(b).

11 'Record' means any record or similar contrivance for reproducing sound, including the soundtrack of a cinematographic film: Theatres Act 1968 s 7(3).

12 'Cinematograph film' means any print, negative, tape or other article on which a performance of a play or any part of such a performance is recorded for the purposes of visual reproduction: Theatres Act 1968 s 7(3).

13 Theatres Act 1968 s 7(2)(b)(i).

14 Theatres Act 1968 s 7(2)(b)(ii). 'Broadcast' means broadcast by wireless telegraphy within the meaning of the Wireless Telegraphy Act 2006 (see **TELECOMMUNICATIONS AND BROADCASTING**), whether by way of sound broadcasting or television: Theatres Act 1968 s 7(3) (definition amended by the Wireless Telegraphy Act 2006 Sch 7 para 3).

15 le a programme service within the meaning of the Broadcasting Act 1990 s 201 (see **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 328): see the Theatres Act 1968 s 7(2)(b)(iii) (as substituted: see note 16).

16 Theatres Act 1968 s 7(2)(b)(iii) (substituted by the Broadcasting Act 1990 Sch 20 para 13).

17 See *Russell v Notcutt* (1896) 12 TLR 195, CA; and PARA 235 note 9.

UPDATE

233 Defamation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS

(i) Theatrical Employments

234. Applicability of general law.

The general law¹ applies to theatrical employments², except in so far as varied or modified by theatrical usage³. For instance, to be enforceable, a contract for theatrical employment must be certain⁴, must not be illegal⁵, and, whether for personal service⁶ or not⁷, is subject to the ordinary rules of avoidance arising from impossibility of performance⁸.

1 See generally **CONTRACT; DISCRIMINATION; EMPLOYMENT; HEALTH AND SAFETY AT WORK**. As to the employment of children in public entertainments see PARA 230; and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 751 et seq. As to the wearing of uniforms on the stage see PARA 241; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 378; **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1121. As to copyright in works and performances see PARA 231; and **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARAS 40, 43, 47, 604 et seq.

2 See *Russell v Criterion Film Productions Ltd* [1936] 3 All ER 627, where it was held that a film company was under a duty to take precautions against injury to the artists. As to the enticement of performers from one employer to another see *De Francesco v Barnum* (1890) 63 LT 514.

3 As to theatrical usages see PARA 238.

4 *Loftus v Roberts* (1902) 18 TLR 532, CA; *Wade v Robert Arthur Theatres Co Ltd* (1907) 24 TLR 77; *Ronald Frankau Productions Ltd v Bell* (1927) 65 L Jo 33 (failure for vagueness). See **CONTRACT** vol 9(1) (Reissue) PARAS 667-668.

5 *Gallini v Laborie* (1793) 5 Term Rep 242 (contract to dance at unlicensed theatre); *De Begnis v Armistead* (1833) 10 Bing 107; *Ewing v Osbaldiston* (1837) 2 My & Cr 53 (contracts to conduct unlicensed theatre); *Gray v Oxford Ltd* (1905) 21 TLR 664 (affd on another point (1906) 22 TLR 684, CA); *Scott v Macnaghton* (1908) Times, 25 November (contracts to perform sketches or stage plays at music halls not having necessary licence). See **CONTRACT** vol 9(1) (Reissue) PARA 869 et seq.

6 See *Robinson v Davison* (1871) LR 6 Exch 269 (where there was a contract to play at a concert on a particular day, and a breach arising from the illness of a performer was excused); *Harvey v Tivoli Manchester Ltd* (1907) 23 TLR 592, DC (where a contract with a troupe of three performers was avoided by the death of one of them); *Terry v Variety Theatres Controlling Co Ltd* (1928) 44 TLR 451, CA (where a contract to engage a theatrical company was not avoided when the principal performer was unable to appear due to illness and a substitute was provided); and **CONTRACT** vol 9(1) (Reissue) PARA 903.

7 See *Glinseretti v Rickards* (1907) Times, 26 January, CA (where there was a contract by a music hall artist for his troupe to perform, and it was held that the contract was not avoided by the death of a member of the troupe); cf *Harvey v Tivoli Manchester Ltd* (1907) 23 TLR 592, DC (see note 6). The contract is not, on the part of the proprietor of the theatre, a personal contract; thus, where the contract is made with proprietors in partnership, the death of one of the proprietors does not terminate the engagement, nor is the engagement affected by the sale of the theatre by mortgagees under a power of sale, even though the contract provides for its termination on the happening of some 'unforeseen calamity': *Phillips v Alhambra Palace Co* [1901] 1 KB 59, DC. Similarly, the manager of a theatre who contracts to allow the production of a play on a certain date is liable in damages if the theatre is not then ready owing to a contractor not having finished his work in time, even though the cause of unreadiness is the reconstruction of the theatre in compliance with the requirements of a local authority, and the agreement contains a clause avoiding the contract in the event of the theatre being closed through fire, death in the Royal Family, 'or any other cause whatsoever': *Hardie v Balmain* (1902) 18 TLR

539, CA. See also *Blow v Lewis* (1902) 19 TLR 127, where a theatre proprietor who agreed to let his theatre for a fortnight was liable in damages when the theatre was closed during that period, following refusal of renewal of its patent, until certain alterations had been carried out.

8 See **CONTRACT** vol 9(1) (Reissue) PARA 888 et seq.

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235. Construction of theatrical contracts.

The construction of theatrical contracts, their performance and the remedies for their breach are generally governed by the rules applicable to other contracts¹. However, there are certain matters peculiar to theatrical contracts which have been the subject of judicial decision.

The term 're-engagement' has no definite legal meaning, and what is 're-engagement' as distinguished from 'fresh engagement' is a question of fact².

An agreement to pay commission on all future engagements at a named music hall is not terminated by the music hall being pulled down and rebuilt³.

Failure through temporary illness to attend rehearsals for six days before the commencement of an engagement in accordance with the terms of an agreement has been held not to justify rescission by the employer⁴; but a failure to attend final rehearsals and the first few performances of an opera may so go to the root of the consideration as to justify rescission⁵.

Inability to perform the part for which the actor⁶ has been engaged is a ground for dismissal unless arising from illness or other temporary cause⁷. A performer may be liable in damages for failure to perform by reason of indisposition not amounting to illness⁸. Failure of an actor to send in 'bill matter' as provided by the contract is a ground for damages but not for cancellation of the contract⁹.

A theatrical contract may be either a contract of service or a contract for services, depending on the circumstances of the case¹⁰.

1 See *Golder's Green Amusement and Development Co Ltd v Relph* (1915) 31 TLR 343 (dealing with the measure of damages where the basis on which the amount was to be ascertained was altered by matters unconnected with, and happening subsequently to, the contract); *Terry v Moss's Empires Ltd* (1915) 32 TLR 92, CA (where there was an agreement providing that the dates mentioned in the contract might be transferred by the artists, with other dates to be given in lieu, and it was held that neither party had the absolute right to fix the dates but that the new dates were to be fixed by agreement between the parties, each party agreeing to act reasonably in the matter); *Gaumont-British Picture Corp'n Ltd v Alexander* [1936] 2 All ER 1686 (where a clause in the contract suspending the artist's salary on his failure to appear was held not to prevent the recovery of damages for breach of contract in addition to the suspension of the salary). As to construction of contracts generally see **DEEDS AND OTHER INSTRUMENTS**. As to remedies for breach of contract see **CIVIL PROCEDURE** vol 11 (2009) PARA 448 et seq; **CONTRACT** vol 9(1) (Reissue) PARA 1002 et seq; **DAMAGES** vol 12(1) (Reissue) PARAS 954-955, 1015 et seq; **SPECIFIC PERFORMANCE** vol 44(1) (Reissue) PARA 801, 959 et seq. As to the recovery of damages for loss of publicity see PARA 236.

2 *Robey v Arnold* (1898) 14 TLR 220, CA; *Arnold v Stratton* (1898) 14 TLR 537, CA. As to the meaning of 'completion of the engagement' see PARA 238 note 3.

3 *Auckland and Brunetti v Collins* (1898) 14 TLR 348, DC. However see *Sales v Crispi* (1913) 29 TLR 491.

4 *Bettini v Gye* (1876) 1 QBD 183.

5 *Poussard v Spiers and Pond* (1876) 1 QBD 410.

6 As to the meaning of 'actor' see *Thomas v A and S Gatti Ltd* (1906) Times, 22 June ('Gibson Girl').

7 *Harley v Henderson* (1884) Times, 18, 19 February. See also PARA 234 note 6.

8 *Fielding v Moiseiwitsch* (1946) 175 LT 265, CA.

9 *Wade v Waldon* 1909 SC 571, Ct of Sess. See also *Elen v London Music Hall Ltd* (1906) Times, 31 May, 1 June. It has been held that to put the names of performers on the bill in the wrong order is capable of being defamatory: *Russell v Notcutt* (1896) 12 TLR 195, CA; and cf *Elen v London Music Hall Ltd*. However see *Renard v Carl Rosa Opera Co* (1906) Times, 15 February.

10 An opera singer engaged for the season for a specified sum per performance has been held to be a servant for the purposes of bankruptcy proceedings in which wages take priority as a preferential debt (see now the Insolvency Act 1986 ss 328, 386, Sch 6; and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 577 et seq): *Re Winter German Opera Ltd* (1907) 23 TLR 662. In *Gould v Minister of National Insurance* [1951] 1 KB 731, [1951] 1 All ER 368, a music hall artist was held to be a self-employed person since his performance was dependent on his own skill and artistry and the management only controlled such aspects of his performance as to ensure the proper working of the theatre. However, a variety artist in 'resident variety' has been held to be an employed person (*Stagecraft Ltd v Minister of National Insurance* 1952 SC 288, Ct of Sess), as has a trapeze artist in a circus who has additional duties as an usherette (*Whittaker v Minister of Pensions and National Insurance* [1967] 1 QB 156, [1966] 3 All ER 531). As to the distinction between a contract of service and a contract for services see generally **EMPLOYMENT** vol 39 (2009) PARA 1 et seq.

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236. Obligation to employ.

Where a manager engages an actor for a definite period, conditions may be implied on the actor's behalf not to appear elsewhere, and on the management's behalf that he is to have reasonable employment¹. However, a manager cannot be expected to give every actor whom he engages a part in every play he produces². Where a manager enters into a contract with an actor or actress that he or she will play a part, that is a substantial obligation which must be fulfilled, or for the breach of which damages may be recovered, not only for loss of salary, but also for the loss of opportunity of enhancing a reputation, loss of existing reputation or loss of publicity³. When an actor is engaged for a part in a play at a London West End theatre, the engagement is, by established custom, for the run of the piece unless there is an express stipulation to the contrary⁴.

An option exercisable by a manager to retain an actor's services after employment at a rising annual salary for a fixed period implies, where no further salary is mentioned, employment at the salary paid during the last year of the fixed period⁵.

1 *Fechter v Montgomery* (1863) 33 Beav 22, where the plaintiff engaged the defendant, a prominent provincial actor, to appear in London for a period of two years; after five months without employment, during which his salary was paid, the defendant entered into a contract with another manager; and the court, holding that the defendant's action was reasonable, refused an interlocutory injunction. As to an employee's right to work generally see **EMPLOYMENT** vol 39 (2009) PARA 30.

2 *Grimston v Cunningham* [1894] 1 QB 125, DC. A person engaged as understudy to a principal performer is not entitled as of right to play the part if the principal is absent: *Newman v Gatti* (1907) 24 TLR 18, CA.

3 *Marbé v George Edwardes (Daly's Theatre) Ltd* [1928] 1 KB 269, CA (approved in *Malik v Bank of Credit and Commerce International SA (in liquidation)* [1998] AC 20 at 41, [1997] 3 All ER 1 at 11, HL, per Lord Nicholls). The importance of the theatre and the amount of billing which would take place must be considered in assessing the damages: *Herbert Clayton and Jack Waller Ltd v Oliver* [1930] AC 209, HL. The part offered to the actor must answer the description in the contract or else there is a breach: *Herbert Clayton and Jack Waller Ltd v Oliver*. The same principles apply to an author engaged to write a screen play: *Tolnay v Criterion Film Productions Ltd* [1936] 2 All ER 1625. See also *Bunning v Lyric Theatre Ltd* (1894) 71 LT 396, where a musical director was held to be entitled to damages for breach of an agreement to advertise his name as musical director and to employ him as such. As to damages for loss of publicity see further **DAMAGES** vol 12(1) (Reissue) PARA 1113.

4 *Clayton-Greene v De Courville* (1920) 36 TLR 790; *George Edwardes (Daly's Theatre) Ltd v Comber* (1926) 42 TLR 247. However see *Gubertini v Waller* [1947] 1 All ER 746.

5 *Wade v Robert Arthur Theatres Co Ltd* (1907) 24 TLR 77. Under an engagement for a week, salary is payable at the end of the week only, even though in the contract provision is made for its apportionment in certain circumstances: *Mapleson v Sears* (1911) 105 LT 639, DC. See **EMPLOYMENT** vol 39 (2009) PARA 23.

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237. Restraint of trade.

A contract by a dramatist not to write dramatic pieces for the proprietors of any other than a particular theatre, or by an actor not to act elsewhere, is not void as a contract in restraint of trade¹.

It seems that an agreement by an actor to perform at a particular theatre is not enforceable by injunction unless it contains a negative clause prohibiting him from performing elsewhere², but the employer is left to his other remedies³. A stipulation that the actor is not to 'act, sing or appear publicly at any other theatre or place of entertainment without special permission' is a sufficient negative restraining clause⁴, but a contract to perform at one theatre exclusively is not⁵.

1 See *Morris v Colman* (1812) 18 Ves 437; *Mapleson v Bentham* (1871) 20 WR 176 (where an opera singer was engaged to sing for the whole of the London season, which ended in August, and nowhere else in Great Britain 'pendant l'année', and an interim injunction to restrain him singing after August was refused); *Tivoli, Manchester Ltd v Colley* (1904) 20 TLR 437 (where a stipulation that an artist was not to appear within 20 miles of Manchester within six months of a week's engagement without consent was held not to be unreasonable); *London Music Hall Ltd v Austin* (1908) Times, 16 December. As to contracts unenforceable as being in restraint of trade see **EMPLOYMENT** vol 39 (2009) PARA 19; **COMPETITION** vol 18 (2009) PARA 377 et seq.

2 *Whitwood Chemical Co v Hardman* [1891] 2 Ch 416, CA (overruling *Montague v Flockton* (1873) LR 16 Eq 189); *Marco Productions Ltd v Pagola* [1945] KB 111, [1945] 1 All ER 155. An interim injunction which would prevent the actor from earning his livelihood should not be granted: *Palace Theatre Ltd v Clensy and Hackney and Shepherd's-Bush Empire Palaces Ltd* (1909) 26 TLR 28, CA, per Vaughan Williams LJ. As to the granting of injunctions in the case of contracts for personal services see **CIVIL PROCEDURE** vol 11 (2009) PARAS 448, 460 et seq.

3 See *Whitwood Chemical Co v Hardman* [1891] 2 Ch 416 at 425, CA, per Lindley LJ. See also *De Francesco v Barnum* (1890) 63 LT 514.

4 *Lumley v Wagner* (1852) 1 De GM & G 604, overruling *Kemble v Kean* (1829) 6 Sim 333, and *Kimberley v Jennings* (1836) 6 Sim 340, and followed in *Grimston v Cunningham* [1894] 1 QB 125, DC. For a case where such a clause was implied but an injunction was refused see *Fechter v Montgomery* (1863) 33 Beav 22; and PARA 236 note 1. A contract not to perform before or during her 'engagement at any theatre, music hall, club, concert or place of entertainment' has been held not to debar an actress from performing, without remuneration, on Sunday at a club: *Kelly v London Pavilion Ltd*, *Kelly v Oxford Ltd*, *Kelly v New Tivoli Ltd* (1898) 14 TLR 234, CA. See also *London Theatre of Varieties Ltd v Evans* (1914) 31 TLR 75, CA (where there was an agreement by a music hall artist not to give or permit to be given any colourable imitation, representation or version of his performance within a certain radius; and it was held that a representation of his performance given on the cinema within the prescribed area was not a breach of the agreement); *London Theatre of Varieties Ltd v Gibbons* (1916) 33 TLR 26 (where an agreement by the manager of a company owning music halls not to be interested in any 'music hall, theatre, circus, hippodrome or other place of entertainment' was held not to be broken by the manager being interested in cinematograph entertainments); *Hepworth Manufacturing Co Ltd v Rycott* [1920] 1 Ch 1, CA; *Archie Parnell and Alfred Zeitlin Ltd v Theatre Royal (Drury Lane) Ltd* (1936) 80 Sol Jo 284, CA; *Warner Bros Pictures Inc v Nelson* [1937] 1 KB 209, [1936] 3 All ER 160.

5 *Davis v Foreman* [1894] 3 Ch 654, followed in *Kirchner & Co v Gruban* [1909] 1 Ch 413. However see *Doherty v Allman* (1878) 3 App Cas 709 at 719, HL, per Lord Cairns LC. The contrary was assumed in *Gaiety Theatre Co Ltd v Loftus* (1893) Times, 11 August, but the point was not argued.

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238. Theatrical usages.

Theatrical usages, like other usages¹, apply to contracts only where both parties were aware, or must be presumed to have been aware, of the existence of the usage and where the usage is certain, universal, reasonable and not opposed to the general law². There is a usage:

- 678 (1) that the engagement of an actor for three years means three theatrical seasons³;
- 679 (2) that the proprietor of a theatre may within reasonable limits fix what is to be the length of the season⁴; and
- 680 (3) that prominent artists are to be 'starred' on a music hall bill⁵.

Attempts have failed to establish a usage among theatrical persons:

- 681 (a) that a 'tour' means three weeks⁶;
- 682 (b) that there is a custom that indisposition not amounting to illness releases a performer from his obligation to perform⁷;
- 683 (c) that an actor engaged to take a part in a play to be produced is entitled to 'open' in the part⁸;
- 684 (d) that, where a theatre is let to a touring company for certain performances in a fixed period, the theatre may not be let to another company for performances at other times within that period⁹;
- 685 (e) that an acting manager has a right to a private box or to give free orders for admission¹⁰; or
- 686 (f) that pianos are so constantly hired to lessees of theatres as to exclude the assumption that the lessee is reputed owner of a piano on the premises¹¹.

When an actress is called upon to resume a part which she has previously acted with success, she is entitled to reasonable notice to relearn the part; and in determining what is reasonable notice in such a case regard is had to the reputation which she has acquired in the part and which is at stake¹².

1 See generally **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 650 et seq.

2 *White v Henderson* (1885) 2 TLR 119 at 121 per Grove J. See also **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 656 et seq.

3 *Grant v Maddox* (1846) 15 M & W 737; and cf *Mapleson v Bentham* (1871) 20 WR 176 (see PARA 237 note 1). See also *Fechter v Montgomery* (1863) 33 Beav 22; and PARA 236 note 1. As to the meaning of 'completion of the engagement' in a contract providing for a series of performances of a week each at considerable intervals, and containing a clause restraining the artist from performing within a certain area for a period of eight months prior to the completion of the engagement see *London Music Hall Ltd v Austin* (1908) Times, 16 December.

4 *Montague v Flockton* (1873) LR 16 Eq 189, not overruled on this point by *Whitwood Chemical Co v Hardman* [1891] 2 Ch 416, CA. See also *Gubertini v Waller* [1947] 1 All ER 746; and **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 650 et seq.

5 *Elen v London Music Hall Ltd* (1906) Times, 31 May, 1 June.

- 6 *Wyatt v Phipps* (1896) 40 Sol Jo 781.
- 7 *Fielding v Moiseiwitsch* (1946) 175 LT 265, CA.
- 8 *White v Henderson* (1885) 2 TLR 119.
- 9 *Cotton v Sounes* (1902) 18 TLR 456.
- 10 *Lacy v Osbaldiston* (1837) 8 C & P 80.
- 11 *Chappell & Co Ltd v Harrison* (1910) 103 LT 594, DC. See also **CUSTOM AND USAGE** vol 12(1) (Reissue)
PARAS 678, 688.
- 12 *Graddon v Price* (1827) 2 C & P 610.

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(ii) Exemptions for Performers with respect to Firearms, Smoking and Uniforms

239. Firearms.

A person taking part in a theatrical performance or rehearsal or in the production of a cinematograph film may, without holding a firearms certificate¹, have a firearm² in his possession during and for the purpose of the performance, rehearsal or production³. Further, if the Secretary of State⁴ is satisfied, on the application of a person in charge of the performance, rehearsal or film production, that a prohibited weapon⁵ is required for it, he may authorise that person and other selected persons taking part to have possession of the weapon⁶.

1 As to the meaning of 'certificate' see the Firearms Act 1968 s 57(4); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 634.

2 As to the meaning of 'firearm' see the Firearms Act 1968 s 57(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 630.

3 Firearms Act 1968 s 12(1).

4 The Firearms Act 1968 s 12(2) originally referred to the Defence Council, whose functions were transferred to the Secretary of State by the Transfer of Functions (Prohibited Weapons) Order 1968, SI 1968/1200. As to the Secretary of State see PARA 2.

5 As to the meaning of 'prohibited weapon' see the Firearms Act 1968 s 5(2); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 661.

6 Firearms Act 1968 s 12(2) (amended by the Firearms (Amendment) Act 1988 s 23(2); and by virtue of SI 1968/1200). See also **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 656.

UPDATE

239-240 Firearms, Smoking by person taking part in a performance

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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240. Smoking by person taking part in a performance.

The enclosed or substantially enclosed areas¹ of premises open to the public² are generally to be smoke-free³. However, the power to provide for exceptions by regulations⁴ includes power to provide for specified descriptions of premises or specified areas within such premises not to be smoke-free in relation only to those participating as performers in a performance⁵, or in a performance of a specified description, if the artistic integrity of the performance makes it appropriate for them to smoke⁶.

In England, where the artistic integrity of a performance makes it appropriate for a person who is taking part in that performance to smoke, the part of the premises in which that person performs is not smoke-free in relation to that person during his performance⁷.

¹ As to when areas of premises are enclosed or substantially enclosed for these purposes see PARA 216 note 1.

² As to when areas are open to the public see the Health Act 2006 s 2(7), cited in PARA 216 note 2.

³ Health Act 2006 s 2(1). As theatres, cinemas, film studios etc are also places of work, the relevant areas in them are to be smoke-free at all times: see s 2(2). As to the meaning of 'smoke-free' and 'smoking' see PARA 216 note 3.

⁴ ie the Health Act 2006 s 3(1): see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 251.

⁵ For these purposes, references to a performance include, eg, the performance of a play, or a performance given in connection with the making of a film or television programme, and, if the regulations so provide, include a rehearsal: Health Act 2006 s 3(8).

⁶ Health Act 2006 s 3(4), (5)(a). Section 3(3) (which provides that no general exemption may be made in respect of licensed premises: see PARA 216) does not prevent the exercise of the power under s 3(1) as so extended: s 3(5)(b).

⁷ Smoke-free (Exemptions and Vehicles) Regulations 2007, SI 2007/765, reg 6. At the date at which this volume states the law, however, no equivalent exemption had been made in relation to Wales.

UPDATE

239-240 Firearms, Smoking by person taking part in a performance

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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241. Stage uniforms.

Although the wearing by unauthorised persons of certain military and other service uniforms is prohibited, no offence is committed by the wearing of such a uniform in the course of a stage play performed in a place duly licensed for the public performance of stage plays or in the course of a music hall or circus performance or bona fide military representation¹. Further, although the uniforms and badges of certain other organisations are protected by law, those uniforms and badges may be worn on the stage or in a circus or pageant or cinematograph film if they are not worn in such a way as to bring them into contempt².

¹ See the Uniforms Act 1894 s 2(1) proviso (amended by the Statute Law Revision Act 1908); and the Air Force (Application of Enactments) (No 2) Order 1918, SR & O 1918/548, art 1, Schedule (amended by SI 1964/488). As to other uniforms brought within this provision see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 378.

² See the Chartered Associations (Protection of Names and Uniforms) Act 1926 s 1(4) proviso; and **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1121.

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(iii) Rights of Members of the Audience

242. Right of admission.

Members of the public who are admitted to a theatre are visitors¹ to whom the occupier² of the premises owes, prima facie, the common duty of care³. Their rights depend upon the contract, if any, under which they have been admitted⁴. A member of the public who has paid for admission to a part of a theatre is entitled, on finding no room in that particular part, to demand the return of his money, even if the theatre bills expressly state that no money will be returned⁵. However, he has no right to occupy a seat in any other part of the theatre; if he does so the proprietor may remove him, using no more force than is necessary⁶.

In certain cases the admission of children to film entertainments is the subject of special restrictions⁷.

The right of admission to a theatre is not necessarily confined to admission on a single occasion. A theatre proprietor may let a box for a period with an exclusive right of occupation, subject, if he himself is a lessee, to any restrictions imposed by his own lease⁸. In this case the relationship between the parties is that of landlord and tenant, and the proprietor is not entitled to enter the box or to interfere with it except for the purpose of repairing it or for any other purpose mentioned in the lease⁹.

The right of free admission to a theatre for a specified period may be reserved to the vendor¹⁰ or lessor¹¹ on a sale or lease of a theatre, or it may be granted to any person by the proprietor¹². In this case the person possessing the right has no interest in land, but is merely a licensee for the period specified¹³, and his exact position depends upon the terms of the particular instrument creating the right¹⁴. In the absence of any provision to the contrary¹⁵, the right may not bind an assignee¹⁶ or sub-lessee¹⁷ of the proprietor; and it applies only to the theatre existing at the date of the instrument and not to one later built on the same site¹⁸.

The statutory prohibitions on unlawful discrimination against a person on the grounds of:

- 687 (1) colour, race, nationality, ethnic or national origin¹⁹;
- 688 (2) sex²⁰;
- 689 (3) gender reassignment²¹;
- 690 (4) pregnancy or maternity, in the case of a woman²²;
- 691 (5) religion or belief²³;
- 692 (6) disability in the form of physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities²⁴; or
- 693 (7) sexual orientation, including a sexual orientation which he is thought to have²⁵,

when providing facilities for entertainment, recreation or refreshment²⁶ have already been discussed²⁷.

1 They are visitors in the sense that a theatre ticket is a licence coupled with an agreement not to revoke that licence until the termination of the performance: *Hurst v Picture Theatres Ltd* [1915] 1 KB 1, CA. As to who is a visitor see **NEGLIGENCE** vol 78 (2010) PARA 31.

2 'Occupier' includes the lessee of the theatre (see *Cox v Coulson* [1916] 2 KB 177, CA) and the organiser of the entertainment (see *Fraser-Wallas v Elsie and Doris Waters (a firm)* [1939] 4 All ER 609).

3 See the Occupiers' Liability Act 1957 ss 1(2), 2(1); and **NEGLIGENCE** vol 78 (2010) PARA 29 et seq.

4 See *Said v Butt* [1920] 3 KB 497, where it was held that there is no valid contract between a theatre company and a person who, knowing that he would be refused a ticket if he disclosed his identity, purchases a ticket by an agent who does not disclose his principal. A person who obtains admission by ticket without any intention of seeing the entertainment, eg as part of a trade investigation into takings, is not necessarily a trespasser: *Byrne v Kinematograph Renters Society Ltd* [1958] 2 All ER 579, [1958] 1 WLR 762. The common duty of care may be modified or excluded by agreement: see **NEGLIGENCE** vol 78 (2010) PARA 38.

5 *Lewis v Arnold* (1830) 4 C & P 354.

6 *Lewis v Arnold* (1830) 4 C & P 354.

7 See PARA 256 et seq.

8 *Croft v Lumley* (1858) 6 HL Cas 672, where a covenant not to grant away, assign or dispose of the stalls or boxes in an opera house for any longer period than one year or season was held not to be broken by a sub-lease of boxes for one year commencing from a future date, or by a further sub-lease, made during the continuance of the first sub-lease, to continue for one year commencing on the expiry of the first sub-lease.

9 *Leader v Moody* (1875) LR 20 Eq 145.

10 *Scott v Howard* (1881) 6 App Cas 295, HL; and cf *Helling v Lumley* (1858) 3 De G & J 493.

11 *Coleman v Foster* (1856) 1 H & N 37.

12 See *Flight v Glossopp* (1835) 2 Bing NC 125.

13 *Taylor v Waters* (1816) 2 Marsh 551; and cf *Flight v Glossopp* (1835) 2 Bing NC 125. See **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 9 et seq.

14 Cf *Dauney v Chatterton* (1875) 45 LJQB 293, CA, where the right was conferred by statute.

15 See *Helling v Lumley* (1858) 3 De G & J 493.

16 *Flight v Glossopp* (1835) 2 Bing NC 125; *Malone v Harris* (1859) 11 I Ch R 33; *Scott v Howard* (1881) 6 App Cas 295, HL; and cf *Clare v Theatrical Properties Ltd and Westby & Co Ltd* [1936] 3 All ER 483, CA (where an agreement for front of house rights was held not to be binding against the licensor's assignee). *Clare v Theatrical Properties Ltd and Westby & Co Ltd*, however, 'proceeds on the assumption that the licensee had no right which equity could enforce against the licensor. That assumption is no longer true' (see *Winter Garden Theatre (London) Ltd v Millennium Productions Ltd* [1948] AC 173 at 202, [1947] 2 All ER 331 at 343, HL, per Lord Uthwatt) 'and the case may some day have to be reconsidered accordingly' (*Bendall v McWhirter* [1952] 2 QB 466 at 483, [1952] 1 All ER 1307 at 1314, CA, per Denning LJ). However see *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175, [1965] 2 All ER 472, HL, which overrules *Bendall v McWhirter*, and in which Lord Wilberforce, at 1253 and 498, describes as a fallacy the proposition 'that, because an obligation binds a man's conscience, it therefore becomes binding on the consciences of those who take from him with notice of the obligation'.

17 *Coleman v Foster* (1856) 1 H & N 37.

18 *Scott v Howard* (1881) 6 App Cas 295, HL.

19 See the Race Relations Act 1976 ss 1(1), 3(1). Segregating a person from other persons on these grounds ranks as discrimination: s 1(2). See further **DISCRIMINATION** vol 13 (2007 Reissue) PARA 439 et seq.

20 See the Sex Discrimination Act 1975 ss 1(1), 2(1) (s 1(1) substituted by SI 2001/2660); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 344 et seq.

21 See the Sex Discrimination Act 1975 s 2A (added by SI 1999/1102; amended by SI 2008/963); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 348.

- 22 See the Sex Discrimination Act 1975 s 3B (added by SI 2008/963).
- 23 See the Equality Act 2006 s 44; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 691.
- 24 See the Disability Discrimination Act 1995 s 1(1); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 511 et seq.
- 25 See the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 3; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 753.
- 26 See the Sex Discrimination Act 1975 s 29(1), (2)(e); the Race Relations Act 1976 s 20(1), (2)(e); the Equality Act 2006 s 46(1), (2)(d); the Disability Discrimination Act 1995 ss 19(1), (3)(f), 20; the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 4(1), (2)(d). As to the statutory duty to make reasonable adjustments to the physical features of premises in order to accommodate persons with a disability see PARA 192 text and note 19.
- 27 See PARA 217.

UPDATE

242 Right of admission

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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243. Right to express opinion.

An audience has the right to express, by applause or hisses, the sensations which naturally present themselves at the moment, and its unbiased free opinions of the merits of the performers, but has no right to make such a prodigious noise as to prevent others from hearing what is going on on the stage¹.

If any body of persons goes to a theatre with the intention of hissing an actor, or even damning a piece, it amounts to a conspiracy, and persons to the number of 12 or more who use or threaten unlawful violence in order to execute such a common purpose may be guilty of a riot².

1 *Clifford v Brandon* (1809) 2 Camp 358. See also *Gregory v Duke of Brunswick* (1843) 6 Man & G 205.

2 *Clifford v Brandon* (1809) 2 Camp 358; *Gregory v Duke of Brunswick* (1843) 6 Man & G 205; and see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 555. As to conspiracy see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 67 et seq.

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(iv) Plays

244. Meaning of 'play'.

For the purposes of the Theatres Act 1968 'play' means:

- 694 (1) any dramatic piece¹, whether involving improvisation or not, given wholly or in part by one or more persons actually present and performing and in which the whole or a major part of what is done by such person or persons, whether by way of speech, singing or acting, involves the playing of a role²; and
- 695 (2) any ballet given wholly or in part by one or more persons actually present and performing, whether or not it falls within head (1) above³.

1 As to whether action without words may constitute a 'dramatic piece' cf *Tate v Fullbrook* (1907) 23 TLR 715, revsd [1908] 1 KB 821, CA (see at 829-830 per Vaughan Williams LJ, at 830 per Farwell LJ, and at 834 per Kennedy LJ) ('dramatic piece' copyright action).

2 A dialogue between persons in costume was held to be a 'stage play' within the Theatres Act 1843 (repealed) in *Thorne v Colson* (1861) 25 JP 101, as was a representation in mirrors of persons acting below the stage in *Day v Simpson* (1865) 18 CBNS 680.

3 Theatres Act 1968 s 18(1). Whether a particular entertainment was a 'stage play' within the Theatres Act 1843 (repealed) was a question of fact: *Wigan v Strange* (1865) LR 1 CP 175 (ballet depicting by gestures war, peace and reconciliation). See also note 2.

UPDATE

244-246 Meaning of 'play' ... Obscene performances of plays

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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245. Scripts of new plays.

Where a public performance¹ of a new play² based on a script³ is given in Great Britain, a copy of the actual script on which the performance was based must be delivered to the Trustees of the British Museum⁴ free of charge within the period of one month beginning with the date of the performance⁵. If these requirements are not complied with, any person who presents⁶ such a performance is liable on summary conviction to a fine not exceeding level 1 on the standard scale⁷. A performance of a play given solely or primarily for rehearsal, or to enable a record⁸ or cinematograph film⁹ to be made, or the performance to be broadcast¹⁰ or included in a programme service¹¹ other than a sound or television broadcasting service¹² is disregarded for the purposes of this provision¹³.

1 'Public performance' includes any performance in a public place within the meaning of the Public Order Act 1936 (ie including any highway and any other premises or place to which at the material time the public has or is permitted to have access, whether on payment or otherwise: see s 9(1) (definition substituted by the Criminal Justice Act 1972 s 33) and any performance which the public or any section thereof is permitted to attend, whether on payment or otherwise: Theatres Act 1968 s 18(1). In London, 'public performance' also includes any performance which is not open for the public but which is promoted for private gain: see s 18(1) (definition amended by the London Local Authorities Act 1991 s 18(2), as from days to be appointed by individual councils in accordance with s 3). See further note 2.

2 As to the meaning of 'play' see PARA 244. 'Public performance of a new play' means a public performance of a play of which no previous public performance has ever been given in Great Britain, but does not include a public performance of a play based on a script substantially the same as that on which a previous public performance of a play given there was based, or on a text of the play which has been published in the United Kingdom: Theatres Act 1968 s 11(3). As to the meanings of 'United Kingdom' and 'Great Britain' see PARA 16 note 8. As to the meaning of 'script' see note 3.

3 'Script' means the text of the play (whether expressed in words or in musical or other notation) together with any stage or other directions for its performance, whether contained in a single document or not: Theatres Act 1968 ss 9(2), 18(1).

4 The trustees are required to give a written receipt for each script: Theatres Act 1968 s 11(1). As to the Trustees of the British Museum see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 827. All articles which immediately before 1 July 1973 were the property of the trustees of the British Museum and formed part of the collections in the Museum's Department of Printed Books, Department of Manuscripts and Department of Oriental Printed Books and Manuscripts, or were in normal use in those Departments for the purposes of the collections, or of their storage or management, or for the purposes of the administration of the Departments, are now the property of the British Library Board: see the British Library Act 1972 s 3(1); and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 906 et seq.

5 Theatres Act 1968 s 11(1).

6 A person is not treated as presenting a performance of a play by reason only of his taking part in it as a performer: Theatres Act 1968 s 18(2)(a).

7 Theatres Act 1968 s 11(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 17 note 21.

Where any offence under the Theatres Act 1968 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly: s 16.

8 As to the meaning of 'record' see PARA 233 note 11.

9 As to the meaning of 'cinematograph film' see PARA 233 note 12.

10 As to the meaning of 'broadcast' see PARA 233 note 14.

11 le within the meaning of the Broadcasting Act 1990: see s 201; and **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 328.

12 le a performance given solely or primarily for the purposes of the Theatres Act 1968 s 7(2)(a), (b): see PARAS 233, 250.

13 Theatres Act 1968 s 11(4).

UPDATE

244-246 Meaning of 'play' ... Obscene performances of plays

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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246. Obscene performances of plays.

If an obscene performance of a play¹ is given, whether in public² or private³, any person who, whether for gain or not, presented⁴ or directed⁵ that performance is liable on summary conviction to a fine not exceeding the prescribed sum⁶ or to imprisonment for a term not exceeding six months, and, on conviction on indictment, to a fine or to imprisonment for a term not exceeding three years, or to both⁷. No prosecution on indictment for such an offence may be commenced more than two years after the commission of the offence⁸, and no proceedings, whether summary or on indictment, may be instituted except by or with the consent of the Attorney General⁹.

A performance of a play is deemed to be obscene if, taken as a whole, its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to attend it¹⁰. A person may not be convicted of such an offence if it is proved that the giving of the performance in question was justified as being for the public good on the ground that it was in the interests of drama, opera, ballet or any other art, or of literature or learning¹¹. The opinion of experts as to the artistic, literary or other merits of a performance of a play may be admitted either to establish or to negative this ground¹².

No person may be proceeded against in respect of a performance of a play or anything said or done in the course of a performance for an offence at common law, including the offence of blasphemous libel¹³, where it is of the essence of the offence that the performance or, as the case may be, what was said or done was obscene, indecent, offensive, disgusting or injurious to morality¹⁴. No person may be proceeded against for an offence at common law of conspiring to corrupt public morals, or to do any act contrary to public morals or decency, in respect of an agreement to present or give a performance of a play, or to cause anything to be said or done in the course of such a performance¹⁵.

1 As to the meaning of 'play' see PARA 244.

2 As to the meaning of 'public performance' see PARA 245 note 1.

3 No offence is committed in relation to a performance of a play given on a domestic occasion in a private dwelling: Theatres Act 1968 s 7(1). As to other excepted performances see s 7(2); and PARA 250.

4 A person is not treated as presenting a performance of a play by reason only of his taking part in it as a performer: Theatres Act 1968 s 18(2)(a).

5 A person performing in a play directed by another person is treated as a person who directed the play if, without reasonable excuse, he performs otherwise than in accordance with that person's direction: Theatres Act 1968 s 18(2)(b). A person is taken to have directed a performance of a play given under his direction notwithstanding that he was not present during the performance: s 18(2)(c).

6 The 'prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 141.

7 Theatres Act 1968 s 2(2) (amended by virtue of the Magistrates' Courts Act 1980 s 32(2), (9)). As to offences committed by bodies corporate see s 16; and PARA 245 note 7; and as to exceptions from s 2 see s 7; and PARA 250.

8 Theatres Act 1968 s 2(3).

9 Theatres Act 1968 s 8. As to Her Majesty's Attorney General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529 et seq. As to obscene performances of plays see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 754-756.

10 Theatres Act 1968 s 2(1). The obscenity and tendency to deprave and corrupt of the subject matter need not relate to sex: see *John Calder (Publications) Ltd v Powell* [1965] 1 QB 509, [1965] 1 All ER 159, DC (book highlighting the allegedly favourable effects of drug taking).

11 Theatres Act 1968 s 3(1). It is a matter for the jury to decide, first, whether the performance is obscene, and, secondly, if it is obscene, whether it is justified as being for the public good: *R v Calder and Boyars Ltd* [1969] 1 QB 151, [1968] 3 All ER 644, CA.

12 Theatres Act 1968 s 3(2). Expert evidence is only admissible as to the artistic, literary or other merits of a performance and not as to whether or not the performance is obscene: see *R v Anderson* [1972] 1 QB 304, [1971] 3 All ER 1152, CA (obscene publication). However, expert evidence is admissible on the question of the likely effects of the subject matter of a publication where those effects are not within the experience of the ordinary person: see *R v Skirving* [1985] QB 819, [1985] 2 All ER 705, CA (book dealing with ingesting cocaine). The artistic, literary or other merits are only one factor to be taken into account by the jury in deciding whether the performance is justified as being for the public good, and the jury may find that, despite the merits of a performance, it is still not justified. As to the proper direction to be given to a jury on the defence of public good in relation to obscene publications see *R v Calder and Boyars Ltd* [1969] 1 QB 151 at 172, [1968] 3 All ER 644 at 650, CA, per Salmon LJ. As to obscene publications generally see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 747 et seq.

13 See *R (on the application of Green) v City of Westminster Magistrates' Court* [2007] EWHC 2785 (Admin), [2007] NLJR 1767, [2007] All ER (D) 64 (Dec). Blasphemous libel is to be distinguished from the law of criminal libel so far as it relates to the publication of defamatory material (as to which see PARA 233 text and note 6); the essence of blasphemous libel is offensiveness: *R (on the application of Green) v City of Westminster Magistrates' Court*.

14 Theatres Act 1968 s 2(4)(a). Section 2(4)(a) refers only to an offence at common law and not (due to a drafting omission) to a statutory offence. Thus a prosecution was instituted under the Sexual Offences Act 1956 s 13 (repealed) against Michael Bogdanov as director of Howard Brenton's play *The Romans in Britain* which featured a simulated act of attempted homosexual rape. For details of this case see John Sutherland *Offensive Literature: Decensorship in Britain, 1960-1982* (1982) pp 180-190.

15 Theatres Act 1968 s 2(4). As to the use of a script of the play as evidence of what was performed see s 9; PARA 252; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 756.

UPDATE

244-246 Meaning of 'play' ... Obscene performances of plays

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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247. Incitement to racial hatred.

If a public performance¹ of a play² is given which involves the use of threatening, abusive or insulting³ words or behaviour, any person who presents⁴ or directs⁵ the performance is guilty of an offence if he intends thereby to stir up racial hatred⁶, or having regard to all the circumstances (and, in particular, taking the performance as a whole) racial hatred is likely⁷ to be stirred up thereby⁸.

If the person presenting or directing the performance is not shown to have intended to stir up racial hatred, it is a defence for him to prove⁹:

- 696 (1) that he did not know and had no reason to suspect that the performance would involve the use of the offending words or behaviour¹⁰; or
- 697 (2) that he did not know and had no reason to suspect that the offending words or behaviour were threatening, abusive or insulting¹¹; or
- 698 (3) that he did not know and had no reason to suspect that the circumstances in which the performance would be given would be such that racial hatred would be likely to be stirred up¹².

A person guilty of an offence under the above provisions is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both¹³.

1 As to the meaning of 'public performance' see PARA 245 note 1 (definition applied by the Public Order Act 1986 s 20(5)). Section 20 does not apply to a performance given solely or primarily for one or more of the following purposes: (1) rehearsal; (2) making a recording of the performance; or (3) enabling the performance to be included in a programme service: s 20(3) (amended by the Broadcasting Act 1990 s 164(2)). However, if it is proved that the performance was attended by persons other than those directly connected with the giving of the performance or the doing in relation to it of the things mentioned in head (2) or head (3) above, the performance, unless the contrary is shown, must be taken not to have been given solely or primarily for the purposes mentioned above: Public Order Act 1986 s 20(3).

2 As to the meaning of 'play' see PARA 244 (definition applied by the Public Order Act 1986 s 20(5)).

3 As to the meaning of 'threatening, abusive or insulting' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 558.

4 A person is not to be treated as presenting a performance of a play by reason only of his taking part in it as a performer: Public Order Act 1986 s 20(4)(a). A person is not to be treated as aiding or abetting the commission of an offence under s 20 by reason only of his taking part in a performance as a performer: s 20(4). See also PARA 246 notes 4-5.

5 A person taking part as a performer in a performance directed by another is to be treated as a person who directed the performance if without reasonable excuse he performs otherwise than in accordance with that person's direction: Public Order Act 1986 s 20(4)(b). A person is to be taken to have directed a performance of a play given under his direction notwithstanding that he was not present during the performance: s 20(4)(c). See also PARA 246 notes 4-5.

6 'Racial hatred' means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins: Public Order Act 1986 s 17 (amended by the Anti-terrorism, Crime and Security Act 2001 ss 37, 125, Sch 8 Pt 4).

7 As to racial hatred generally see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 562 et seq.

8 Public Order Act 1986 s 20(1). The provision creates two limbs of liability; the first depends on an intention to stir up racial hatred, and the second, a strict liability offence (but see the text and notes 9-12), depends on the likely effect of the performance. As to exceptions for certain performances see s 20(3); note 1; and PARA 250. A performance may also involve a separate offence under ss 18, 19: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 562 et seq.

See also PARAS 251-253.

9 Public Order Act 1986 s 20(2).

10 Public Order Act 1986 s 20(2)(a).

11 Public Order Act 1986 s 20(2)(b).

12 Public Order Act 1986 s 20(2)(c).

13 Public Order Act 1986 s 27(3) (amended by the Anti-terrorism, Crime and Security Act 2001 s 40). The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32: see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

No proceedings for such an offence may be instituted in England and Wales except by or with the consent of the Attorney General: Public Order Act 1986 s 27(1). Where a body corporate is guilty of such an offence and it is shown that the offence was committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly: s 28(1). Where the affairs of a body corporate are managed by its members, s 28(1) applies in relation to the acts and defaults of a member in connection with his functions of management as it applies to a director: s 28(2).

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248. Stirring up religious hatred or hatred on the grounds of sexual orientation.

If a public performance¹ of a play² is given which involves the use of threatening words or behaviour, any person who presents³ or directs⁴ the performance is guilty of an offence if he intends thereby to stir up religious hatred⁵. A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both⁶.

As from a day to be appointed⁷, a person presenting or directing such a performance will also be guilty of an offence under the above provisions if he intends thereby to stir up hatred on the grounds of sexual orientation⁸.

1 As to the meaning of 'public performance' see PARA 245 note 1 (definition applied by the Public Order Act 1986 s 29D(4) (ss 29D, 29L, 29M added by the Racial and Religious Hatred Act 2006 Schedule)). The Public Order Act 1986 s 29D does not apply to a performance given solely or primarily for one or more of the following purposes; (1) rehearsal; (2) making a recording of the performance; or (3) enabling the performance to be included in a programme service; but if it is proved that the performance was attended by persons other than those directly connected with the giving of the performance or the doing in relation to it of the things mentioned in head (2) or head (3) above, the performance is, unless the contrary is shown, to be taken not to have been given solely or primarily for the purpose mentioned above: s 29D(2) (as so added).

2 As to the meaning of 'play' see PARA 244 (definition applied by the Public Order Act 1986 s 29D(4) (as added: see note 1)).

3 For these purposes, a person is not to be treated as presenting a performance of a play by reason only of his taking part in it as a performer: Public Order Act 1986 s 29D(3)(a) (as added: see note 1). A person is not to be treated as aiding or abetting the commission of an offence under s 29D by reason only of his taking part in a performance as a performer: s 29D(3) (as so added).

4 For these purposes, a person taking part as a performer in a performance directed by another is to be treated as a person who directed the performance if without reasonable excuse he performs otherwise than in accordance with that person's direction: Public Order Act 1986 s 29D(3)(b) (as added: see note 1). A person is to be taken to have directed a performance of a play given under his direction notwithstanding that he was not present during the performance: s 29D(3)(c) (as so added).

5 Public Order Act 1986 s 29D(1) (as added: see note 1). Note that, unlike the offence of incitement to racial hatred (see PARA 247), there is no strict liability offence depending on the likely effect of the performance. As to religious hatred see generally **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 569 et seq. A performance may also involve a separate offence under ss 29B, 29C: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 569 et seq.

See also PARAS 251-253.

6 Public Order Act 1986 s 29L(3) (as added: see note 1). As to the statutory maximum see PARA 247 note 13. No proceedings for such an offence may be instituted in England and Wales except by or with the consent of the Attorney General: s 29L(1) (as so added). Where a body corporate is guilty of such an offence and it is shown that the offence was committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly: s 29M(1) (as so added). Where the affairs of a body corporate are managed by its members, s 29M(1) applies in relation to the acts and defaults of a member in connection with his functions of management as it applies to a director: s 29M(2) (as so added).

7 I.e. as from a day to be appointed under the Criminal Justice and Immigration Act 2008 s 153(7). At the date at which this volume states the law, no such day had been appointed.

8 See the Public Order Act 1986 s 29D(1) (as added (see note 1); prospectively amended by the Criminal Justice and Immigration Act 2008 Sch 16 paras 1, 8, as from a day to be appointed (see note 7); at the date at which this volume states the law, that amendment was not in force). For these purposes, 'hatred on the grounds of sexual orientation' means hatred against a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both): Public Order Act 1986 s 29AB (not yet in force; prospectively added by the Criminal Justice and Immigration Act 2008 Sch 16 paras 1, 4, as from a day to be appointed (see note 7)). For the avoidance of doubt, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices is not to be taken of itself to be threatening or intended to stir up hatred for these purposes: Public Order Act 1986 s 29JA (added by the Criminal Justice and Immigration Act 2008 Sch 16 paras 1, 14).

UPDATE

248 Stirring up religious hatred or hatred on the grounds of sexual orientation

TEXT AND NOTE 6--Public Order Act 1986 s 29L(1), (3) amended, s 29L(4) added: Criminal Justice and Immigration Act 2008 Sch 16 para 16, Sch 28 Pt 5.

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249. Provocation of breach of the peace.

If a public performance¹ of a play² involves the use of threatening, abusive or insulting³ words or behaviour, any person who, whether for gain or not, presented or directed⁴ that performance is guilty of an offence⁵ if he did so with intent to provoke a breach of the peace or the performance, taken as a whole, was likely to occasion a breach of the peace⁶. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale⁷ or to imprisonment for a term not exceeding six months, or both⁸.

1 As to the meaning of 'public performance' see PARA 245 note 1.

2 As to the meaning of 'play' see PARA 244.

3 As to the meaning of 'threatening, abusive or insulting' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 558.

4 As to the presentation or direction of a performance of a play see PARA 246 notes 4-5.

5 As to exceptions to this provision see the Theatres Act 1968 s 7(2), (3); and PARA 250.

6 Theatres Act 1968 s 6(1). Such a performance may also constitute an offence under the Public Order Act 1986 s 4: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 558.

7 As to the standard scale see PARA 17 note 21.

8 Theatres Act 1968 s 6(2) (amended by the Criminal Law Act 1977 ss 15, 30, Sch 1; and by virtue of the Criminal Justice Act 1982 s 46). Proceedings under the Theatres Act 1968 s 6 may not be instituted except by or with the consent of the Attorney General: s 8. As to Her Majesty's Attorney General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529 et seq. As to offences by bodies corporate see PARA 245 note 7.

UPDATE

249-259 Provocation of breach of the peace ... Periods of exhibition

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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250. Exceptions for certain performances.

The provisions as to obscene plays¹, defamatory performances² and provocation of a breach of the peace³ do not apply to a performance of a play⁴ given solely or primarily⁵ for a rehearsal⁶ or to enable a record⁷ or cinematograph film⁸ to be made from or by means of the performance⁹, or the performance to be broadcast¹⁰ or included in a programme service¹¹ other than a sound or television broadcasting service¹². If in any proceedings for relevant offences¹³ it is proved that the performance was attended by persons other than persons directly connected with the giving of the performance, or the recording, filming, broadcasting or transmission, the performance must be taken not to have been given solely or primarily for one or more of the excepted purposes unless the contrary is shown¹⁴. Similar exceptions apply with regard to performances of plays intended or likely to stir up racial hatred¹⁵ or intended to stir up religious hatred or hatred on the grounds of sexual orientation¹⁶.

Where a performance of a play is given on a domestic occasion in a private dwelling, it is exempted from the provisions relating to obscene performances and defamation¹⁷.

A person is not to be treated as aiding or abetting the commission of certain offences¹⁸ by reason only of his taking part in the relevant performance as a performer¹⁹.

1 Ie the Theatres Act 1968 ss 2, 3: see PARA 246.

2 Ie the Theatres Act 1968 s 4: see PARA 233.

3 Ie the Theatres Act 1968 s 6: see PARA 249.

4 As to the meaning of 'play' see PARA 244.

5 See the Theatres Act 1968 s 7(2).

6 See the Theatres Act 1968 s 7(2)(a). Section 7(2) refers to ss 2-6, of which s 5 has been repealed.

7 As to the meaning of 'record' see PARA 233 note 11.

8 As to the meaning of 'cinematograph film' see PARA 233 note 12.

9 Theatres Act 1968 s 7(2)(b)(i).

10 Theatres Act 1968 s 7(2)(b)(ii). As to the meaning of 'broadcast' see PARA 233 note 14.

11 Ie within the meaning of the Broadcasting Act 1990: see s 201; and **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 328.

12 Theatres Act 1968 s 7(2)(b)(iii) (substituted by the Broadcasting Act 1990 Sch 20 para 13).

13 Ie offences under the Theatres Act 1968 s 2 or s 6 (see notes 1, 3), or at common law in relation to the publication of defamatory matter in the course of a performance of a play: see s 7(2) (amended by the Public Order Act 1986 Sch 3).

14 See the Theatres Act 1968 s 7(2) (as amended: see note 13).

15 See the Public Order Act 1986 s 20(3); and PARA 247 note 1.

16 See the Public Order Act 1986 s 29D(3); and PARA 248 note 1.

17 Theatres Act 1968 s 7(1). The provisions referred to are ss 2-4: see notes 1-2.

18 The offences under the Theatres Act 1968 s 2 or s 6 (see notes 1, 3) or under the Public Order Act 1986 s 20 (see PARA 247) or s 29D (see PARA 248).

19 See the Theatres Act 1968 s 18(2)(a) (amended by the Public Order Act 1986 Sch 3); the Public Order Act 1986 ss 20(3), 29D(3) (s 29D(3) added by the Racial and Religious Hatred Act 2006 Schedule).

UPDATE

249-259 Provocation of breach of the peace ... Periods of exhibition

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(iv) Plays/251. Warrant for police to attend performance.

251. Warrant for police to attend performance.

If a justice of the peace is satisfied by information on oath that there are reasonable grounds for suspecting, as regards any premises¹ specified in the information², that a performance of a play³ is to be given at those premises and that any of certain offences⁴ is likely to be committed in respect of that performance⁵, the justice may issue a warrant empowering any police officer⁶ at any time within one month from the date of the warrant to enter the premises⁷ and to attend any performance of a play which may be given there⁸.

1 'Premises' includes any place: Theatres Act 1968 s 18(1).

2 Theatres Act 1968 s 15(1).

3 As to the meaning of 'play' see PARA 244.

4 I.e. an offence under the Theatres Act 1968 ss 2, 6 (see PARAS 246, 249) or the Public Order Act 1986 s 20 or s 29D (see PARAS 247-248): see the Theatres Act 1968 s 15(1)(a) (amended by the Public Order Act 1986 Sch 3; the Licensing Act 2003 Sch 6 paras 43, 45(a)(i); the Theatres Act 1968 s 15(1) applied in relation to an offence of stirring up racial hatred by means of a public performance of a play under the Public Order Act 1986 s 20 (see PARA 247) by s 20(6), and applied in relation to an offence of stirring up religious hatred or hatred on the grounds of sexual orientation by means of a public performance of a play under s 29D (see PARA 248) by s 29D(5) (added by the Racial and Religious Hatred Act 2006 Schedule)).

5 See the Theatres Act 1968 s 15(1)(a) (as amended and applied: see note 4).

6 'Police officer' means a member of a police force: Theatres Act 1968 s 18(1).

7 Theatres Act 1968 s 15(1) (amended by the Police and Criminal Evidence Act 1984 Sch 6 Pt I para 18; the Licensing Act 2003 Sch 6 paras 43, 45(a)(ii); and applied (see note 4)).

8 Theatres Act 1968 s 15(1)(i) (as applied: see note 4).

UPDATE

249-259 Provocation of breach of the peace ... Periods of exhibition

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(iv) Plays/252. Script of play as evidence.

252. Script of play as evidence.

Where a performance of a play¹ was based on a script², then in any proceedings for any of certain offences³ alleged to have been committed in respect of that performance⁴:

- 699 (1) an actual script on which that performance was based or, in certain circumstances⁵, a copy of it is admissible as evidence of what was performed and of the manner in which the performance was given⁶; and
- 700 (2) if the script is given in evidence on behalf of any party then, except in so far as the contrary is shown, whether by evidence given on behalf of the same or any other party, the performance is to be taken to have been given in accordance with that script⁷.

1 As to the meaning of 'play' see PARA 244.

2 As to the meaning of 'script' see PARA 245 note 3.

3 I.e. an offence under the Theatres Act 1968 ss 2, 6 (see PARAS 246, 249) or the Public Order Act 1986 s 20 or s 29D (see PARAS 247-248): see the Theatres Act 1968 s 9(1) (amended by the Public Order Act 1986 Sch 3; applied in relation to an offence of stirring up racial hatred by means of a public performance of a play under the Public Order Act 1986 s 20 (see PARA 247) by s 20(6), and applied in relation to an offence of stirring up religious hatred or hatred on the grounds of sexual orientation by means of a public performance of a play under s 29D (see PARA 248) by s 29D(5) (added by the Racial and Religious Hatred Act 2006 Schedule)).

4 See the Theatres Act 1968 s 9(1) (as amended and applied: see note 3).

5 I.e. where a copy of an actual script has been made by or on behalf of a police officer by virtue of an order under the Theatres Act 1968 s 10 (see PARA 253): s 10(5).

6 Theatres Act 1968 s 9(1)(a) (as applied: see note 3); and see s 10(5).

7 Theatres Act 1968 s 9(1)(b) (as applied: see note 3); and see s 10(5).

UPDATE

249-259 Provocation of breach of the peace ... Periods of exhibition

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(iv) Plays/253. Power to make copies of scripts.

253. Power to make copies of scripts.

If a police officer¹ of or above the rank of superintendent has reasonable grounds for suspecting that any of certain offences² has been committed, or that a performance of a play³ is to be given and that such an offence is likely to be committed by any person in respect of that performance, he may make an order in writing relating to that person and that performance⁴. Every such order must be signed by the police officer by whom it is made, name the person to whom it relates, and describe the performance to which it relates in a manner sufficient to enable that performance to be identified⁵. Where such an order has been made, any police officer, on production if so required of the order, may require the person named in it to produce, if such a thing exists, an actual script⁶ on which the performance was or, as the case may be, will be based, and if such a script is produced to him, may require the person so named to afford him an opportunity of causing a copy⁷ of it to be made⁸. Any person who without reasonable excuse fails to comply with these requirements is liable on summary conviction to a fine not exceeding level 3 on the standard scale⁹.

1 As to the meaning of 'police officer' see PARA 251 note 6. As to ranks in police forces see generally **POLICE** vol 36(1) (2007 Reissue) PARA 230.

2 Is an offence under the Theatres Act 1968 ss 2, 6 (see PARAS 246, 249) or the Public Order Act 1986 s 20 or s 29D (see PARAS 247-248): see the Theatres Act 1968 s 10(1) (amended by the Public Order Act 1986 s 40(3), Sch 3; applied in relation to an offence of stirring up racial hatred by means of a public performance of a play under the Public Order Act 1986 s 20 (see PARA 247) by s 20(6), and applied in relation to an offence of stirring up religious hatred or hatred on the grounds of sexual orientation by means of a public performance of a play under s 29D (see PARA 248) by s 29D(5) (added by the Racial and Religious Hatred Act 2006 Schedule)).

3 As to the meaning of 'play' see PARA 244.

4 See the Theatres Act 1968 s 10(1) (as amended and applied: see note 2).

5 Theatres Act 1968 10(2) (as applied: see note 2).

6 As to the meaning of 'script' see PARA 245 note 3.

7 Such a copy is to be regarded in the same way as the actual script for the purposes of evidence of what was performed (see the Theatres Act 1968 s 9; and PARA 252): see s 10(5) (as applied: see note 2).

8 Theatres Act 1968 s 10(3)(a) (as applied: see note 2).

9 Theatres Act 1968 s 10(4) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46; and applied (see note 2)). As to the standard scale see PARA 17 note 21. As to offences committed by a body corporate see PARA 245 note 7.

UPDATE

249-259 Provocation of breach of the peace ... Periods of exhibition

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(v) Films/A. SAFETY AND WELFARE/254. Storage of film.

(v) Films

A. SAFETY AND WELFARE

254. Storage of film.

The use of premises where raw celluloid or cinematograph film is kept or stored is subject to special legislation¹, but this legislation does not apply to premises which may, by virtue of a premises licence², club premises certificate³ or temporary event notice⁴ which satisfies certain statutory conditions⁵, be used for an exhibition⁶ of a film⁷.

1 See the Celluloid and Cinematograph Film Act 1922; and **BUILDING** vol 4(2) (2002 Reissue) PARA 451 et seq.

2 As to the meaning of 'premises licence' see PARA 53 note 1.

3 As to the meaning of 'club premises certificate' see PARA 85.

4 As to the meaning of 'temporary event notice' see PARA 108.

5 Ie by virtue of an authorisation within the meaning of the Licensing Act 2003 s 136: see s 136(5); and PARA 132. The conditions which must be satisfied in the case of a temporary event notice are the conditions of s 98(1)-(4) (see PARA 108): s 136(5)(c).

6 Ie an exhibition of a film within the meaning of the Licensing Act 2003 Sch 1 para 15: see PARA 31 note 14.

7 Celluloid and Cinematograph Film Act 1922 s 2(2) proviso (iv) (added by SI 2002/2776; amended for these purposes by the Licensing Act 2003 Sch 6 para 10).

UPDATE

249-259 Provocation of breach of the peace ... Periods of exhibition

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

254-259 Storage of film ... Periods of exhibition

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(v) Films/A. SAFETY AND WELFARE/255. Fire safety requirements for film exhibitions.

255. Fire safety requirements for film exhibitions.

The Regulatory Reform (Fire Safety) Order 2005¹ now regulates fire safety in cinemas². Premises licences³ and club premises certificates⁴ granted under the transitional provisions for converting existing licences and certificates to licences and certificates under the Licensing Act 2003⁵ may, however, incorporate as conditions the requirements of the Cinematograph (Safety) Regulations 1955⁶ which had effect under the previous licensing regime. Guidance issued by the Secretary of State⁷ explains that any holders of a converted licence seeking to remove those conditions may apply to vary their converted licences or certificates⁸. When considering variation applications or applications for new licences, licensing authorities⁹ and responsible authorities¹⁰ must recognise the need for steps to be taken to assure public safety at such premises in the absence of the 1955 Regulations¹¹.

1 The Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541: see generally **FIRE SERVICES**.

2 The Cinematograph (Safety) Regulations 1955, SI 1955/1129, which had effect as if made under the Cinemas Act 1985 ss 1(2), 4, 6(1),(3), 7, 8, have lapsed with the repeal of those provisions, in relation to England and Wales, by the Licensing Act 2003 Sch 6 para 95.

3 As to the meaning of 'premises licence' see PARA 53 note 1.

4 As to the meaning of 'club premises certificate' see PARA 85.

5 See the Licensing Act 2003 Sch 8. As to the commencement of the Licensing Act 2003, and for transitional provisions, see PARA 26.

6 See note 2.

7 The guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see PARA 2.

8 See *Guidance issued under section 182 of the Licensing Act 2003* (28 June 2007, Department for Culture, Media and Sport) para 2.30. That guidance is published on the department's website, accessible at the date at which this volume states the law at www.culture.gov.uk. As to applications to vary premises licences see PARA 69; and as to applications to vary club premises certificates see PARA 101.

9 As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35.

10 As to the meaning of 'responsible authority' see PARA 53 note 26 (premises licences), PARA 88 note 14 (club premises certificates).

11 See *Guidance issued under section 182 of the Licensing Act 2003* (28 June 2007, Department for Culture, Media and Sport) para 2.30.

UPDATE

249-259 Provocation of breach of the peace ... Periods of exhibition

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

254-259 Storage of film ... Periods of exhibition

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(v) Films/A. SAFETY AND WELFARE/256. Restrictions on the admission of children to film exhibitions.

256. Restrictions on the admission of children to film exhibitions.

Where a premises licence¹ or club premises certificate² authorises the exhibition of films, it must include a condition requiring the admission of children to films to be restricted in accordance with recommendations given either by the British Board of Film Classification³ or by the licensing authority⁴ itself⁵.

These requirements replace the detailed regulations as to the health and welfare of children attending film exhibitions previously contained in the Cinematograph (Children) (No 2) Regulations 1955⁶. Guidance issued by the Secretary of State⁷, however, suggests that licensing authorities should consider imposing conditions in premises licences or club premises certificates which include similarly detailed requirements, for example that:

- 701 (1) where a programme includes a film recommended by the licensing authority as falling into an age restrictive category no person appearing to be under the age specified is to be admitted to any part of the programme;
- 702 (2) where a programme includes a film recommended by the licensing authority as falling into a category requiring any persons under a specified age to be accompanied by an adult, no person appearing to be under the age specified is to be admitted to any part of the programme unaccompanied by an adult;
- 703 (3) the licence holder must display in a conspicuous position a notice clearly stating the relevant age restrictions and requirements; and
- 704 (4) where performances are presented especially for unaccompanied children, an attendant is to be stationed in the area or areas occupied by the children, in the vicinity of each exit, provided that on each level occupied by children the minimum number of attendants on duty should be one attendant per 50 children⁸.

1 As to the meaning of 'premises licence' see PARA 53 note 1.

2 As to the meaning of 'club premises certificate' see PARA 85.

3 I.e. the film classification body designated as the authority under the Video Recordings Act 1984 s 4: see PARA 279.

4 As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

5 See the Licensing Act 2003 s 20; and PARA 57; s 74; and PARA 93. Note that, while advertisements are not 'regulated entertainment' for the purposes of the Licensing Act 2003 (see Sch 1 para 5), they are caught by ss 20, 74: see *Guidance issued under section 182 of the Licensing Act 2003* (28 June 2007, Department for Culture, Media and Sport) para 10.56. That guidance is published on the department's website, accessible at the date at which this volume states the law at www.culture.gov.uk.

6 The Cinematograph (Children) (No 2) Regulations 1955, SI 1955/1909, which had effect as if made under the Cinemas Act 1985 ss 1(2), 4, 7, 8, have lapsed with the repeal of those provisions, in relation to England and Wales, by the Licensing Act 2003 Sch 6 para 95.

7 I.e. under the Licensing Act 2003 s 182: see PARA 2.

8 See *Guidance issued under section 182 of the Licensing Act 2003* (28 June 2007, Department for Culture, Media and Sport) Annex D Pt 5.

UPDATE

249-259 Provocation of breach of the peace ... Periods of exhibition

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

254-259 Storage of film ... Periods of exhibition

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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B. CONTROL OF EXHIBITION AND PRODUCTION OF FILMS

257. Purposes of control.

The purpose of control of the exhibition of films is to ensure their suitability for public exhibition¹. Previous legislative provisions which sought to control production, with the purpose of securing the renting and exhibition of a certain proportion of British films and regulating the conditions under which they were made and distributed, have been repealed, although certain statutory controls continue to exist in respect of the production of films².

1 As to the suitability of films see PARA 258; and as to mandatory conditions in premises licences and club premises certificates regarding the exhibition of films see PARAS 57, 93. As to the meaning of 'premises licence' see PARA 53 note 1; and as to the meaning of 'club premises certificate' see PARA 85.

2 As to statutory controls on the production of films see PARA 260.

UPDATE

249-259 Provocation of breach of the peace ... Periods of exhibition

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

254-259 Storage of film ... Periods of exhibition

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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258. Suitability of films for exhibition.

The suitability of a film for exhibition is the concern of the local licensing authorities¹, and is dealt with by conditions attached to the licences issued in respect of premises². There is no central or national authority exercising powers of censorship prior to the showing of any film. The British Board of Film Classification³ (formerly the British Board of Film Censors), a private organisation set up with the co-operation of the film industry, and maintained by fees based on the footage of films examined, examines films before display and issues its own certificates of suitability, whether for general showing or for particular age groups. These certificates have no legal effect but are in the main accepted by local licensing authorities as a measure of suitability, although it is necessary for a local licensing authority to reserve to itself the right to dispense with or override the board's certificate⁴. The result is a certain variety of local standards both as regards general suitability and as to the particular categories in which any film may be placed or the conditions under which it may be shown.

1 As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

2 As to mandatory conditions in premises licences and club premises certificates regarding the exhibition of films see PARAS 57, 93. As to the meaning of 'premises licence' see PARA 53 note 1; and as to the meaning of 'club premises certificate' see PARA 85.

3 As to the British Board of Film Classification see PARA 23.

4 As to the final decision of the licensing authority on what films are to be shown see the Licensing Act 2003 ss 20(3), 74(3); and PARAS 57, 93.

UPDATE

249-259 Provocation of breach of the peace ... Periods of exhibition

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

254-259 Storage of film ... Periods of exhibition

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(v) Films/B. CONTROL OF EXHIBITION AND PRODUCTION OF FILMS/259. Periods of exhibition.

259. Periods of exhibition.

It is unlawful for a distributor¹ to require, as a condition of the supply of a film to an exhibitor for exhibition in a cinema² on or after the day of general release³ of that film, that the exhibitor should exhibit the film for a period longer than:

- 705 (1) in the case of the exhibition of a film for a period commencing within six weeks of the day of general release of the film, two weeks; or
- 706 (2) in any other case, one week⁴.

These provisions are now enforceable under the Enterprise Act 2002⁵.

1 'Distributor' means a person carrying on the business of supplying films to exhibitors for exhibition; 'exhibitor' means a person carrying on the business of exhibiting films; 'film' means any record, however made, capable of being used as a means of showing a sequence of visual images as a moving picture; and 'exhibition' means exhibition to the public but does not include an exhibition free of charge to all members of the audience and 'exhibited' is to be construed accordingly: Films (Exhibition Periods) Order 1996, SI 1996/3140, art 2(1).

2 'Cinema' means any premises in the United Kingdom which are used for the exhibition of films and which require a licence or consent for that purpose under the Licensing Act 2003 (see PARA 53 et seq) or under the Cinemas Act 1985 s 1 or s 2 (repealed in relation to England and Wales): Films (Exhibition Periods) Order 1996, SI 1996/3140, art 2(1); Interpretation Act 1978 s 17(2). As to the meaning of 'United Kingdom' see PARA 16 note 8.

3 'The day of general release', in relation to any film, means (1) the first day on which the film is exhibited in five or more cinemas on the same day; or (2) the day on which the total number of cinemas in which the film has been exhibited exceeds nine, whichever first occurs: Films (Exhibition Periods) Order 1996, SI 1996/3140, art 2(1). If an exhibition of a film begins but is not completed on any day, the film is to be treated for these purposes as having been exhibited on the day on which the exhibition begins: art 2(2).

4 Films (Exhibition Periods) Order 1996, SI 1996/3140, art 3.

5 The Films (Exhibition Periods) Order 1996, SI 1996/3140, was made under the Fair Trading Act 1973 ss 56(2), 90(2), Sch 8 para 5 (repealed). The Enterprise Act 2002 s 94(1)-(6) (rights to enforce undertakings and orders: see **COMPETITION** vol 18 (2009) PARA 245) applies to the 1996 Order: see the Enterprise Act 2002 Sch 24 para 15(2); and the Enterprise Act 2002 (Enforcement Undertakings and Orders) Order 2004, SI 2004/2181, Sch 2. Compliance with the order is also enforceable by civil proceedings brought by the Competition Commission for an injunction or for any other appropriate relief or remedy: Enterprise Act 2002 Sch 24 para 15(3). Schedule 24 para 15(3) and s 94(6) as applied by virtue of Sch 24 para 15(2) do not prejudice any right that a person may have by virtue of s 94(4) as so applied to bring civil proceedings for contravention or apprehended contravention of the 1996 Order: Enterprise Act 2002 Sch 24 para 15(4).

UPDATE

249-259 Provocation of breach of the peace ... Periods of exhibition

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

254-259 Storage of film ... Periods of exhibition

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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260. Production of films.

Although registration of films is no longer required for film quota purposes, a register of films¹ nevertheless continues to be kept by the Secretary of State² in connection with the determination, for the purposes of any statutory provision, of questions relating to the registration of films under certain repealed provisions³. In addition, there are other controls that continue to exist, such as the prohibition on the public exhibition of films the production of which has involved cruelty to animals⁴.

1 le the register kept under the Films Act 1960 Pt II (ss 8-23) (repealed): see the Films Act 1985 s 7(3).

2 As to the Secretary of State see PARA 2.

3 See the Films Act 1985 s 7(3), which preserves the register notwithstanding the repeal of the Films Act 1960. The statutory provisions are Pt II (repealed) or the Cinematograph Films Act 1938 Pt III (repealed): see the Films Act 1985 s 7(3).

4 As to the protection of animals see PARA 229; and **ANIMALS** vol 2 (2008) PARAS 817 et seq, 973 et seq.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(v) Films/B. CONTROL OF EXHIBITION AND PRODUCTION OF FILMS/261. Financial assistance by the Secretary of State in connection with the production of films.

261. Financial assistance by the Secretary of State in connection with the production of films.

The Secretary of State¹ with the consent of the Treasury² may give financial assistance:

- 707 (1) to any British company or partnership³ for any purpose connected with the production of relevant films⁴;
- 708 (2) to any person for the purpose of enabling projects to be prepared, or other preliminary work to be undertaken or steps taken, with a view to the production of relevant films, or for any purpose connected with the production of short films⁵.

Assistance may be given by way of a grant or loan or in the form of a guarantee or otherwise⁶. The Secretary of State may appoint a person to make recommendations and provide other services in connection with the discharge by the Secretary of State of his functions under head (2) above⁷. Any sums required by the Secretary of State for making payments⁸, or for meeting any expenses of any person appointed⁹, must be paid out of money provided by Parliament¹⁰, and any sums received by the Secretary of State must be paid into the Consolidated Fund¹¹.

1 As to the Secretary of State see PARA 2.

2 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

3 Ie being a company or partnership in whose case he is satisfied as to the matters mentioned in the Films Act 1985 s 3(4)(a) and (b): see s 5(1). 'British company' means a company incorporated under the laws of Great Britain, being a company (1) over which a Commonwealth citizen has control, or two or more Commonwealth citizens are together in a position to exercise control; or (2) over which a company which is a British company by virtue of the preceding provisions of this definition has control, or two or more such companies or such a company and a Commonwealth citizen are together in a position to exercise control: ss 3(7), 5(1). 'British partnership' means a limited partnership formed in accordance with the Limited Partnerships Act 1907 in which the general partner within the meaning of that Act, or (as the case may be) each of the general partners, is a British company: Films Act 1985 ss 3(7), 5(1). As to the meaning of 'Great Britain' see PARA 16 note 8. As to limited partnerships see **PARTNERSHIP** vol 79 (2008) PARA 218 et seq.

4 'Relevant film' means a film which is intended to satisfy (whether wholly or to a substantial extent) the conditions that must be satisfied under the Films Act 1985 Sch 1 (see PARA 265) for a film to be a British film for the purposes of Sch 1: ss 3(7), 5(1).

5 Films Act 1985 s 5(1) (amended by the Statute Law (Repeals) Act 1993). 'Short film' means a relevant film (see note 4) with a total playing time of less than 35 minutes: Films Act 1985 s 5(1).

6 Films Act 1985 s 5(2). In giving assistance the Secretary of State may impose such conditions as he thinks fit, including conditions requiring a grant to be repaid in specified circumstances: s 5(2).

7 Films Act 1985 s 5(3).

8 Ie under the Films Act 1985 s 5(1): see s 5(4).

9 Ie under the Films Act 1985 s 5(3): see s 5(4).

10 Films Act 1985 s 5(4).

11 Films Act 1985 s 5(4). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

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C. TAXATION

(A) TAXATION OF ACTIVITIES OF FILM PRODUCTION COMPANY

262. Introduction and definitions.

For the purposes of income and corporation tax and capital gains tax, particular provision is made with regard to the activities of film production companies¹. For those purposes, there cannot be more than one film production company in relation to a film².

A company that, otherwise than in partnership:

- 709 (1) is responsible for pre-production³, principal photography⁴ and post production of the film, and for delivery of the completed film⁵;
- 710 (2) is actively engaged in production planning and decision-making during pre-production⁶, principal photography and post production; and
- 711 (3) directly negotiates, contracts and pays for rights, goods and services in relation to the film,

is the film production company in relation to the film⁷.

In relation to a qualifying co-production⁸, a company that, otherwise than in partnership:

- 712 (a) is a co-producer⁹; and
- 713 (b) makes an effective creative, technical and artistic contribution to the film,

is the film production company in relation to the film¹⁰.

If there is more than one company meeting the description in heads (1) to (3) or heads (a) and (b) above, the company that is most directly engaged in the activities referred to in those heads is the film production company in relation to the film¹¹. If there is no company meeting that description, there is no film production company in relation to the film¹².

A company may elect to be regarded as a company which does not meet the description in heads (1) to (3) or heads (a) and (b) above¹³. The election must be made by the company by being included in its company tax return¹⁴ for an accounting period¹⁵, and may be included in the return originally made or by amendment¹⁶. It may be withdrawn by the company only by amending its company tax return for that accounting period¹⁷. The election has effect in relation to films which commence principal photography in that or any subsequent accounting period¹⁸.

1 See the Finance Act 2006 Pt 3 Ch 3 (ss 31-53); the text and notes 2-15; and PARA 263 et seq.

2 Finance Act 2006 s 32(1), (2). In Pt 3 Ch 3, 'film' includes any record, however made, of a sequence of visual images that is capable of being used as a means of showing that sequence as a moving picture: s 31(1). Each part of a series of films is treated as a separate film, unless (1) the films form a series with not more than 26 parts; (2) the combined playing time is not more than 26 hours; and (3) the series constitutes a self-

contained work or is a series of documentaries with a common theme, in which case the films are treated as a single film: s 31(2). References to a film include the film soundtrack: s 31(3).

3 In relation to a film that commenced principal photography (as to the meaning of which see note 4) before 1 April 2006, and was not completed before 1 January 2007, the references in heads (1)-(2) in the text to pre-production are omitted: Corporation Tax (Taxation of Films) (Transitional Provisions) Regulations 2007, SI 2007/1050, regs 3, 4. As to when a film is completed see note 5.

4 If all or any of the images in a film are generated by computer, references in the Finance Act 2006 Pt 3 Ch 3 to principal photography are to be read as references to, or as including, the generation of those images: s 33(2). The Treasury may by regulations amend s 33(2) (s 33(3)(a)); but no such regulations may be made unless a draft of them has been laid before and approved by a resolution of the House of Commons (s 33(4)).

5 For these purposes, a film is completed when it is first in a form in which it can reasonably be regarded as ready for copies of it to be made and distributed for presentation to the general public: Finance Act 2006 s 31(4).

6 See note 3.

7 Finance Act 2006 s 32(3).

8 'Qualifying co-production' means a film that falls to be treated as a national film in the United Kingdom by virtue of an agreement between Her Majesty's Government in the United Kingdom and any other government, international organisation or authority: Finance Act 2006 s 36(a). As to the meaning of 'United Kingdom' see PARA 16 note 8.

9 'Co-producer' means a person who is a co-producer for the purposes of the agreement referred to in the Finance Act 2006 s 36(a) (see note 8): s 36(b).

10 Finance Act 2006 s 32(4).

11 Finance Act 2006 s 32(5).

12 Finance Act 2006 s 32(6).

13 Finance Act 2006 s 32(7) (s 32(7)-(10) added by the Finance Act 2007 s 58(1)).

14 'Company tax return' has the same meaning as in the Finance Act 1988 Sch 18 (see Sch 18 para 3(1); and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1669): Finance Act 2006 s 32(10) (as added: see note 13).

15 As to accounting periods see the Income and Corporation Taxes Act 1988 s 12; and **INCOME TAXATION** vol 23(1) (Reissue) PARAS 837-838.

16 Finance Act 2006 s 32(8)(a) (as added: see note 13).

17 Finance Act 2006 s 32(8)(b) (as added: see note 13).

18 Finance Act 2006 s 32(9) (as added: see note 13).

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263. Activities treated as a separate trade for corporation tax purposes.

The following provisions apply in relation to films¹ that commence principal photography² on or after 1 January 2007³. The activities of the film production company⁴ in relation to such a film are treated as a trade separate from any other activities of the company, and from any activities in relation to any other film⁵. The film production company is treated as starting to carry on the trade when pre-production of the film begins, or, if earlier, when any income from the film⁶ is received by the company⁷.

Where a company incurs expenditure on development of a film and subsequently begins to carry on a trade as the film production company in relation to the film, the expenditure may be treated as expenditure of that trade and as if incurred immediately after the company began to carry it on⁸. If expenditure so treated has previously been taken into account for other tax purposes, the company must amend any relevant company tax return⁹ accordingly¹⁰. Any amendment or assessment necessary to give effect to that provision may be made notwithstanding any limitation on the time within which an amendment or assessment may normally be made¹¹.

For the first period of account there must be brought into account in determining profit or loss:

- 714 (1) as a debit, the costs of the film incurred¹², and represented in work done, to date; and
- 715 (2) as a credit, the proportion of the estimated total income from the film treated as earned at the end of that period¹³.

For any period of account after the first there must be brought into account in determining profit or loss:

- 716 (a) as a debit, the difference between the amount of the costs of the film incurred, and represented in work done, to date and the corresponding amount for the previous period; and
- 717 (b) as a credit, the difference between the proportion of the estimated total income from the film treated as earned at the end of that period and the corresponding amount for the previous period¹⁴.

Estimates for these purposes must be made as at the balance sheet date for each period of account, on a fair and reasonable basis taking into consideration all relevant circumstances¹⁵. Expenditure in respect of which relief has been given under certain other statutory provisions¹⁶ is not to be taken into account for these purposes¹⁷.

The above provisions are applied, with modifications, to films that commenced principal photography before 1 January 2007 but were not completed before that date¹⁸.

A company's gains in respect of intangible fixed assets are, in general, chargeable to corporation tax as income and its losses in respect of intangible fixed assets are brought into account for the purposes of corporation tax in accordance with the relevant provisions¹⁹ of the Finance Act 2002²⁰. Those provisions do not, however, apply:

718 (i) to an intangible fixed asset held by a film production company to the extent that it represents production expenditure²¹ on a film to which the provisions set out above²² apply²³; or

719 (ii) except as regards royalties, to an intangible fixed asset held by a company to the extent that it represents expenditure by the company:

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48. (A) on the production of the original master version of a film²⁴ that commenced principal photography before 1 January 2007;

49. (B) on the acquisition before 1 October 2007 of the original master version of a film that commenced principal photography before 1 January 2007²⁵.

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1 As to the meaning of 'film' see PARA 262 note 2.

2 As to the meaning of 'principal photography' see PARA 262 note 4.

3 Finance Act 2006 s 37, Sch 4 para 1 (amended by SI 2006/3265).

4 As to the meaning of 'film production company' see PARA 262.

5 Finance Act 2006 Sch 4 para 2.

6 For these purposes, references to income from the film are to any receipts by the company in connection with the making or exploitation of the film: Sch 4 para 6(1). This includes (1) receipts from the sale of the film or rights in it; (2) royalties or other payments for use of the film or aspects of it (eg, characters or music); (3) payments for rights to produce games or other merchandise; (4) receipts by the company by way of a profit share agreement: Sch 4 para 6(2). Receipts that (apart from this provision) would be regarded as of a capital nature are treated as being of a revenue nature: Sch 4 para 6(3).

7 Finance Act 2006 Sch 4 para 3.

8 Finance Act 2006 Sch 4 para 4(1).

9 As to the meaning of 'company tax return' see PARA 262 note 14.

10 Finance Act 2006 Sch 4 para 4(2).

11 Finance Act 2006 Sch 4 para 4(3).

12 For these purposes, costs are incurred when they are represented in the state of completion of the work in progress: Finance Act 2006 Sch 4 para 9(1). Accordingly: (1) payments in advance for work to be done are ignored until the work has been carried out; and (2) deferred payments are recognised to the extent that the work is represented in the state of completion: Sch 4 para 9(2). The costs incurred on a film are to be taken to include an amount that has not been paid only if it is the subject of an unconditional obligation to pay: Sch 4 para 9(3). Where an obligation is linked to income being earned from the film no amount is to be brought into account in respect of the costs of the obligation unless an appropriate amount of income is or has been brought into account: Sch 4 para 9(4).

For these purposes, references to the costs of the film are to expenditure incurred by the company on (a) film-making activities in connection with the film; or (b) activities with a view to exploiting the film: Sch 4 para 5(1). This is subject to any provision of the Corporation Tax Acts prohibiting the making of a deduction, or restricting the extent to which a deduction is allowed, in calculating the profits of a trade: Sch 4 para 5(2). Expenditure that (apart from this provision) would be regarded as of a capital nature by reason only of being incurred on the creation of an asset (the film) is treated as being of a revenue nature: Sch 4 para 5(3). 'Film-making activities', in relation to a film, means the activities involved in development, pre-production, principal photography and post production of the film: s 33(1). The Treasury may by regulations: (i) amend s 33(1); (ii) provide that specified activities are or are not to be regarded for the purposes of Pt 3 Ch 3 as film-making activities or as film-making activities of a particular description; (iii) provide that, in relation to a specified description of film, references in Pt 3 Ch 3 to film-making activities of a particular description are to be read as references to such activities as may be specified; and 'specified' means specified in the regulations: s 33(3). No such regulations may be made unless a draft of the regulations has been laid before and approved by a resolution of the House of Commons: s 33(4). At the date at which this volume states the law, no such regulations had been made.

- 13 Finance Act 2006 Sch 4 para 7(1). The proportion of estimated total income treated as earned at the end of any period of account is determined using the formula set out in Sch 4 para 7(3).
- 14 Finance Act 2006 Sch 4 para 7(2); and see note 13.
- 15 Finance Act 2006 Sch 4 para 8.
- 16 Ie under (1) the Finance (No 2) Act 1992 s 40B, s 41 or s 42 (all repealed); (2) the Finance (No 2) Act 1997 s 48 (repealed); or (3) the Income Tax (Trading and other Income) Act 2005 s 135 (allocation of production or acquisition expenditure to relevant periods: see **INCOME TAXATION**), ss 136-138A (repealed) or ss 139-142 (repealed).
- 17 Finance Act 2006 Sch 4 para 10.
- 18 See the Corporation Tax (Taxation of Films) (Transitional Provisions) Regulations 2007, SI 2007/1050, regs 3, 9, 13. As to when a film is completed see PARA 262 note 5.
- 19 Ie in accordance with the Finance Act 2002 Sch 29: see **INCOME TAXATION**.
- 20 See the Finance Act 2002 Sch 29 para 1(1), (2). For these purposes, 'intangible asset' has the meaning it has for accounting purposes; and references to an intangible asset include, in particular, any intellectual property: Sch 29 para 2(1), (2). An 'intangible fixed asset', in relation to a company, means an intangible asset acquired or created by the company for use on a continuing basis in the course of the company's activities: Sch 29 para 3(1). References in Sch 29 to an intangible fixed asset include an option or other right to acquire an intangible asset that if acquired would be a fixed asset, or to dispose of an intangible fixed asset; and unless otherwise indicated, the provisions of Sch 29 apply to an intangible fixed asset whether or not it is capitalised in the company's accounts: Sch 29 para 3(2), (3).
- 21 In relation to a film, 'production expenditure' means expenditure on film-making activities in connection with the film: Finance Act 2006 s 34(1) (definition applied by the Finance Act 2002 Sch 29 para 80A(1) (Sch 29 para 80A added by the Finance Act 2006 s 51)).
- 22 Ie the Finance Act 2006 Sch 4: see the text and notes 1-17.
- 23 Finance Act 2002 Sch 29 para 80A(1) (as added: see note 21).
- 24 For these purposes: (1) 'film' has the same meaning as in the Finance Act 2006 Pt 3 Ch 3 (see PARA 262 note 2); (2) 'original master version' means the original negative, tape or disc; (3) references to the original master version of a film include the original master version of the film soundtrack (if any); and (4) references to the original master version include any rights in the original master version that are held or acquired with it: Finance Act 2002 Sch 29 para 80A(3) (as added: see note 21).
- 25 Finance Act 2002 Sch 29 para 80A(2) (as added (see note 21); amended by virtue of SI 2006/3265).

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(B) FILM TAX RELIEF

264. Qualifying films.

A film¹ qualifies for film tax relief² if the following conditions are met³:

- 720 (1) the film must be intended for theatrical release⁴; and whether this condition is met is determined for each accounting period⁵ of the film production company⁶ during which film-making activities⁷ are carried on in relation to the film, in accordance with the statutory rules⁸;
- 721 (2) the film must be certified by the Secretary of State⁹ as a British film¹⁰; and
- 722 (3) not less than 25%¹¹ of the core expenditure¹² on the film incurred:
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- 50. (a) in the case of a British film other than a qualifying co-production¹³, by the film production company;
- 51. (b) in the case of a qualifying co-production, by the co-producers¹⁴,
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- 723 must be United Kingdom expenditure¹⁵.

1 As to the meaning of 'film' see PARA 262 note 2.

2 As to entitlement to relief see PARA 268; as to claims for relief see PARA 269; and as to provisional entitlement to relief see PARA 270.

3 Finance Act 2006 s 38.

4 Finance Act 2006 s 39(1). For this purpose, 'theatrical release' means exhibition to the paying public at the commercial cinema; and a film is not regarded as intended for theatrical release unless it is intended that a significant proportion of the earnings from the film should be obtained by such exhibition: s 39(2).

5 As to accounting periods see the Income and Corporation Taxes Act 1988 s 12; and **INCOME TAXATION** vol 23(1) (Reissue) PARAS 837-838.

6 As to the meaning of 'film production company' see PARA 262.

7 As to the meaning of 'film-making activities' see PARA 263 note 12.

8 Finance Act 2006 s 39(3). If at the end of an accounting period the film is intended for theatrical release, the condition is treated as having been met throughout that period, subject to s 39(5)(b) (see head (2) below): s 39(4). If at the end of an accounting period the film is not intended for theatrical release, the condition (1) is treated as having been not met throughout that period; and (2) cannot be met in any subsequent accounting period; but this does not affect any entitlement of the company to relief in an earlier accounting period for which the condition was met: s 39(5).

9 Ie under the Films Act 1985 Sch 1: see PARA 265. As to the Secretary of State see PARA 2. In relation to a film that commenced principal photography before 1 January 2007 but was not completed before that date, the certification must be for the purposes of film tax relief: see the Corporation Tax (Taxation of Films) (Transitional Provisions) Regulations 2007, SI 2007/1050, regs 3, 5. As to the meaning of 'principal photography' see PARA 262 note 4; and as to when a film is completed see PARA 262 note 5.

10 Finance Act 2006 s 40.

11 The Treasury may by regulations amend the percentage specified in head (3) in the text; but no such regulations may be made unless a draft of the regulations has been laid before and approved by a resolution of the House of Commons: Finance Act 2006 s 41(2), (3).

12 'Core expenditure' means production expenditure on pre-production, principal photography and post production: Finance Act 2006 s 34(1). As to the meaning of 'production expenditure' see PARA 263 note 21.

13 As to the meaning of 'qualifying co-production' see PARA 262 note 8.

14 As to the meaning of 'co-producer' see PARA 262 note 9.

15 Finance Act 2006 s 41(1). For the purposes of Pt 3 Ch 3, 'UK expenditure', in relation to a film, means expenditure on goods or services that are used or consumed in the United Kingdom: s 35(1). Any apportionment of expenditure for these purposes as between UK expenditure and non-UK expenditure must be made on a fair and reasonable basis: s 35(2). The Treasury may by regulations amend s 35(1); but no such regulations may be made unless a draft of the regulations has been laid before and approved by a resolution of the House of Commons: s 35(3), (4). As to the meaning of 'United Kingdom' see PARA 16 note 8.

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265. Certification of British films for the purposes of film tax relief; in general.

The film production company¹ may apply to the Secretary of State² for the certification of a film³ as a British film⁴. The application may be for an interim or final certificate⁵. An interim certificate is a certificate granted before the film is completed⁶ that the film, if completed in accordance with the proposals set out in the application, will be a British film⁷; and a final certificate is a certificate granted after the film is completed that the film is a British film⁸.

The applicant must produce to the Secretary of State such books or other documents relating to the application, and provide the Secretary of State with such other information with respect to it, as the Secretary of State may require for the purposes of determining the application⁹. The Secretary of State may require information provided for the purposes of the application to be accompanied by a statutory declaration, by the person providing it, as to the truth of the information¹⁰.

The Secretary of State may make regulations:

- 724 (1) prescribing the form of applications under the above provisions¹¹;
- 725 (2) prescribing the particulars and evidence necessary for satisfying the Secretary of State that a film is a British film for these purposes¹²;
- 726 (3) providing that any statutory declaration which is required¹³ to be made by any person is to be deemed to be properly made if it is made on his behalf by any such person as may be specified in the regulations¹⁴.

A film is a British film for these purposes if it passes the relevant cultural test¹⁵. There are three different cultural tests, namely a test for a documentary¹⁶, a test for an animation¹⁷ and a test for a film that is not a documentary or an animation¹⁸. Her Majesty may by Order in Council provide for films to be treated as British films for these purposes if they are made in accordance with the terms of any agreement between Her Majesty's Government in the United Kingdom and any other government, international organisation or authority¹⁹. A film must not, however, be certified as a British film for these purposes if parts of the film whose playing time exceeds 10 per cent of the total playing time of the film are derived from a previous film, unless the two films have the same film production company or producer²⁰, and the previous film has not been so certified²¹; but the Secretary of State may direct that this exclusion is not to apply in relation to a film if in his opinion it is a documentary and its subject matter makes it appropriate for the exclusion not to be applied²².

If the Secretary of State is satisfied that the requirements are met for interim or final certification of a film as a British film, he must certify the film accordingly²³; and if he is not satisfied that those requirements are met, he must refuse the application²⁴. An interim certificate:

- 727 (a) may be given subject to conditions, and, unless the Secretary of State directs otherwise, is of no effect if the conditions are not met;
- 728 (b) may be expressed to expire after a specified period, and, unless the Secretary of State directs otherwise, ceases to have effect at the end of that period; and

729 (c) ceases to have effect when a final certificate is issued²⁵.

If it appears to the Secretary of State that a film certified by him under these provisions ought not to have been certified, he must revoke its certification; and unless he directs otherwise, a certificate that is revoked is treated as never having had effect²⁶.

Any person who is aggrieved by any decision of the Secretary of State under the above provisions²⁷ may, subject to rules of court, apply to the High Court, and the decision of that court is final²⁸.

The above provisions are applied with modifications to films that commenced principal photography before 1 January 2007 but were not completed before that date²⁹.

1 For these purposes, 'film production company' has the same meaning as in the Finance Act 2006 Pt 3 Ch 3 (ss 31-53) (see s 32; and PARA 262): Films Act 1985 Sch 1 para 1(1) (Sch 1 para 1 substituted by the Finance Act 2006 Sch 5 Pt 2 para 17).

2 As to the Secretary of State see PARA 2. The Secretary of State may, with the approval of the Treasury, by order make such modifications of any of the provisions of the Films Act 1985 Sch 1 paras 1, 4-5, as he considers appropriate, and any such order may contain such incidental, supplemental and transitional provisions as he considers appropriate in connection with the order: Sch 1 para 10(2) (amended by the Finance Act 2006 Sch 5 Pt 2 para 23(b)). 'Modifications' includes additions, omissions and alterations: Films Act 1985 Sch 1 para 10(3). No such order may be made unless it has been laid before Parliament and approved by a resolution of each House: see Sch 1 para 10(5).

3 For these purposes, 'film' includes any record, however made, of a sequence of visual images that is capable of being used as a means of showing that sequence as a moving picture: Films Act 1985 Sch 1 para 1(1) (as substituted: see note 1). Each part of a series of films is treated as a separate film, unless (1) the films form a series with not more than 26 parts; (2) the combined playing time is not more than 26 hours; and (3) the series constitutes a self-contained work or is a series of documentaries with a common theme, in which case the films are treated as a single film: Sch 1 para 1(2) (as so substituted). References in Sch 1 to a film include the film soundtrack: Sch 1 para 1(3) (as so substituted).

4 Films Act 1985 Sch 1 para 2(1) (Sch 1 para 2 substituted by the Finance Act 2006 Sch 5 Pt 2 para 18). An application for the certification of a film as a British film, other than a co-production film, must be made in writing to the Secretary of State: Films (Certification) Regulations 2006, SI 2006/3281, reg 3. 'Co-production film' means a film which by virtue of any Order in Council made under the Films Act 1985 Sch 1 para 4(5) (see the text and notes 16-19) is to be treated as if it is a British film for the purposes of Sch 1: Films (Certification) Regulations 2006, SI 2006/3281, reg 2.

5 Films Act 1985 Sch 1 para 2(2) (as substituted: see note 4).

6 For these purposes, a film is completed when it is first in a form in which it can reasonably be regarded as ready for copies of it to be made and distributed for presentation to the general public: Films Act 1985 Sch 1 para 1(4) (as substituted: see note 1).

7 Films Act 1985 Sch 1 para 2(3) (as substituted: see note 4).

8 Films Act 1985 Sch 1 para 2(4) (as substituted: see note 4).

9 Films Act 1985 Sch 1 para 2(5) (as substituted: see note 4). The application must set out the following particulars of the film (Films (Certification) Regulations 2006, SI 2006/3281, reg 4, Schedule (amended by SI 2007/3478)), ie:

- 22 (1) title of the film or, in the case of a series of films or a part thereof, the title of the series or part;
- 23 (2) total playing time in minutes and seconds of the film, including credits and titles;
- 24 (3) whether the application is for interim or final certification;
- 25 (4) whether the film is intended for theatrical release;
- 26 (5) name of the applicant;

- 27 (6) address of the applicant's principal place of business;
- 28 (7) address of the applicant's registered office;
- 29 (8) registered number of the applicant;
- 30 (9) date of registration of the applicant;
- 31 (10) date of the first day of principal photography;
- 32 (11) date on which the film was completed for the purposes of the Films Act 1985 Sch 1;
- 33 (12) if the applicant seeks treatment of a series of films as a single film in reliance upon Sch 1 para 1(2) (see note 3), the number of parts in the series, the combined playing time in minutes and seconds of those parts, including credits and titles, and the reasons why the series constitutes a self-contained work or is series of documentaries with a common theme;
- 34 (13) type of film: documentary, animation or standard;
- 35 (14) if the film is a documentary, the reasons why the film should be considered to be a documentary;
- 36 (15) if the film is an animation, the reasons why the film should be considered to be an animation;
- 37 (16) the reasons why any point should be awarded under Sch 1 paras 4A(3), 4B(3) or 4C(3) (see PARA 266);
- 38 (17) the reasons why any point should be awarded under Sch 1 paras 4A(4), 4B(4) or 4C(4) (see PARA 266);
- 39 (18) if the applicant seeks to rely on Sch 1 para 4A(5)(a)(i) (see PARA 266), the total number of days of principal photography and the number of days of principal photography carried out in the United Kingdom;
- 40 (19) if the applicant seeks to rely on the rest of Sch 1 para 4A(5), 4B(5) and 4C(5) (see PARA 266), the total expenditure of the work in relation to which the applicant is applying for points to be awarded and the expenditure of such work carried out in the United Kingdom;
- 41 (20) the nationality or ordinary residence of all the persons mentioned in Sch 1 paras 4A(6), 4B(6) or 4C(6) (see PARA 266) in relation to whom the applicant is applying for a point to be awarded;
- 42 (21) total core expenditure;
- 43 (22) total UK expenditure;
- 44 (23) total non-UK expenditure by each country the expenditure is carried out in;
- 45 (24) other expenditure on the work carried out in the making of the film which is not core expenditure;
- 46 (25) shooting script in the English language;
- 47 (26) a complete synopsis or treatment of the screenplay in the English language;
- 48 (27) shooting schedule;
- 49 (28) production budget;
- 50 (29) copy of the chain of title;
- 51 (30) if any part of the film is derived from any previous film ('the previous film'), then (a) for each part of the film so derived and in respect of which the two films do not have the same film production company or producer, and the previous film has not been certified under Sch 1, the playing time in minutes and seconds of that part; (b) the combined playing time in minutes and seconds of all the parts referred to in head (a) above; and (c) if the applicant seeks to rely on Sch

1 para 5(2) (see note the text and note 22), the reasons why the subject matter of the film makes it appropriate for Sch 1 para 5(1) (see the text and notes 20-21) not to be applied.

For these purposes, 'theatrical release' means exhibition to the paying public at the commercial cinema; 'producer' means the person by whom the arrangements necessary for the making of the film are undertaken; and 'other expenditure' means all the expenditure on the work carried out in the making of the film which is not core expenditure: Films (Certification) Regulations 2006, SI 2006/3281, reg 2. As to the meanings of 'core expenditure' and 'UK expenditure' see PARA 264 notes 12, 15 (definitions applied by reg 2); and as to the meaning of 'United Kingdom' see PARA 16 note 8.

Where an application for final certification seeks to rely on any point that may be awarded under the Films Act 1985 Sch 1 paras 4A(5), 4B(5), 4C(5), 4A(6), 4B(6) or 4C(6) (see PARA 266), the application must be accompanied by a report prepared by a person who is eligible for appointment as an auditor under the companies legislation and is not and was not at any time while the film was being made (i) in partnership with the applicant or any officer or servant of the applicant; (ii) in the employment of the applicant or any officer or servant of the applicant; or (iii) an officer or servant of the applicant or, if the applicant is a member of a group of companies, of any other company in that group, verifying the particulars in heads (18)-(20) above: see the Films (Certification) Regulations 2006, SI 2006/3281, reg 6(1), (2) (reg 6(1) substituted by SI 2007/3478).

10 Films Act 1985 Sch 1 para 2(6) (as substituted: see note 4). The application must be accompanied by a statutory declaration made by the applicant as to the truth of the particulars given in the application: Films (Certification) Regulations 2006, SI 2006/3281, reg 5(1). A statutory declaration is deemed to be properly made by the applicant if it has been made on behalf of the company by the secretary or one of the directors of the company or a by any person duly authorised by the company to make the declaration on its behalf: reg 5(2).

11 Films Act 1985 Sch 1 para 10(1)(a). As to the exercise of this power see note 4.

12 Films Act 1985 Sch 1 para 10(1)(b). As to the exercise of this power see note 9.

13 Is required by the Films Act 1985 Sch 1 para 2(6): see the text and note 10.

14 Films Act 1985 Sch 1 para 10(1)(c) (amended by the Finance Act 2006 Sch 5 Pt 2 para 23(a)). As to the exercise of this power see note 10.

15 See the Films Act 1985 Sch 1 para 4(1) (substituted by the Finance Act 2006 Sch 5 Pt 2 para 20).

16 See PARA 266 at heads (1)-(5).

17 See PARA 266 at heads (a)-(e).

18 See PARA 266 at heads (i)-(v).

19 Films Act 1985 Sch 1 para 4(5) (substituted by SI 2006/643). See the Films Co-Production Agreements Order 1985, SI 1985/960, Schedule (substituted by SI 2007/2125), which lists agreements made with (1) Australia (see Cm 1758); (2) Canada (see Cmnds 6380, 9887, Cm 1807); (3) France (see Cm 2992); (4) Jamaica (see Cm 7168); (5) New Zealand (see Cm 2638); and (6) South Africa (see Cm 6866). A film with respect to which the requirements of Films Act 1985 Sch 1 as to the eligibility of a film for certification as a British film are not fulfilled is to be treated as a film with respect to which those requirements are fulfilled if the film was made in accordance with those agreements: Films Co-Production Agreements Order 1985, SI 1985/960, art 2.

A film is also to be treated as a British film for the purposes of the Films Act 1985 Sch 1 if it is made in accordance with the terms of the European Convention on Cinematographic Co-production and if (1) where there are two co-producers, one is established in the United Kingdom and the other is established in a state which is a contracting party to that Convention; or (2) where there are three or more co-producers, one is established in the United Kingdom and at least two others are established in different states each of which is a contracting party to the Convention: European Convention on Cinematographic Co-production Order 2006, SI 2006/2656, arts 1(2), 2. For these purposes, a state is a contracting party to the Convention if that state has ratified, accepted or approved, or acceded to, that Convention, and the Convention is in force in relation to that state: see the European Convention on Cinematographic Co-production Order 2006, SI 2006/2656, art 1(3).

20 For these purposes, 'producer' means the person by whom the arrangements necessary for the making of the film are undertaken: Films Act 1985 Sch 1 para 5(3)(b) (Sch 1 para 5(3) added by the Finance Act 2006 Sch 5 Pt 2 para 21(1), (3)).

21 Films Act 1985 Sch 1 para 5(1) (substituted by the Finance Act 2006 Sch 5 Pt 2 para 21(1), (2)). For these purposes: (1) the film soundtrack must be left out of account; and (2) in relation to certification before 1 January 2007 (the date before the commencement of the Finance Act 2006 Pt 3 Ch 3 (ss 31-53): see the Finance Act 2006, Section 53(1) (Films and Sound Recordings) (Appointed Day) Order 2006, SI 2006/3399, art 2), references

to certification of a film are to be read as references to certification of the master negative, tape or disc of the film: Films Act 1985 Sch 1 para 5(3)(a), (c) (as added: see note 20).

22 Films Act 1985 Sch 1 para 5(2) (substituted by SI 1999/2386).

23 Films Act 1985 Sch 1 para 3(1) (Sch 1 para 3 substituted by the Finance Act 2006 Sch 5 Pt 2 para 19).

24 Films Act 1985 Sch 1 para 3(2) (as substituted: see note 23).

25 Films Act 1985 Sch 1 para 3(3) (as substituted: see note 23).

26 Films Act 1985 Sch 1 para 3(4) (as substituted: see note 23).

27 In any decision under Sch 1 para 3: see the text and notes 23-26).

28 Films Act 1985 Sch 1 para 9(1) (amended by the Finance Act 2006 Sch 5 Pt 2 para 22).

29 See the Corporation Tax (Taxation of Films) (Transitional Provisions) Regulations 2007, SI 2007/1050, regs 3, 10(1), (6), (7), 13, modifying the amendments made by the Finance Act 2006 Sch 5 Pt 2 and adding, for transitional purposes only, the Films Act 1985 Sch 1A.

UPDATE

265 Certification of British films for the purposes of film tax relief; in general

NOTE 19--SI 1985/960 Schedule further substituted: SI 2009/3009.

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266. Certification of British films; the cultural tests.

The cultural test for a documentary is as follows¹:

- 730 (1) subject to the minimum requirements as to setting, characters and story², a film passes the cultural test if it is awarded at least 16 points in total³;
- 731 (2) up to 16 points are to be awarded in respect of the content of the film⁴;
- 732 (3) up to four points may be awarded in respect of the contribution of the film to the promotion, development and enhancement of British culture⁵;
- 733 (4) up to three points must be awarded in respect of work carried out in the making of the film⁶; and
- 734 (5) up to eight points must be awarded in respect of the personnel involved in the making of the film⁷.

The cultural test for an animation, which differs in the detail as to how some of the points are to be awarded, is as follows⁸:

- 735 (a) subject to the minimum requirements as to setting, characters and story⁹, a film passes the cultural test if it is awarded at least 16 points in total¹⁰;
- 736 (b) up to 16 points are to be awarded in respect of the content of the film¹¹;
- 737 (c) up to four points may be awarded in respect of the contribution of the film to the promotion, development and enhancement of British culture¹²;
- 738 (d) up to three points must be awarded in respect of work carried out in the making of the film¹³; and
- 739 (e) up to eight points must be awarded in respect of the personnel involved in the making of the film¹⁴.

The cultural test for a film other than a documentary or an animation also differs in the detail as to how some of the points are to be awarded, and is as follows¹⁵:

- 740 (i) subject to the minimum requirements as to setting, characters and story¹⁶, a film passes the cultural test if it is awarded at least 16 points in total¹⁷;
- 741 (ii) up to 16 points are to be awarded in respect of the content of the film¹⁸;
- 742 (iii) up to four points may be awarded in respect of the contribution of the film to the promotion, development and enhancement of British culture¹⁹;
- 743 (iv) up to three points must be awarded in respect of work carried out in the making of the film²⁰; and
- 744 (v) up to eight points must be awarded in respect of the personnel involved in the making of the film²¹.

¹ Films Act 1985 Sch 1 para 4B(1) (Sch 1 para 4A-4D added by SI 2006/643; the Films Act 1985 Sch 1 paras 4A-4C substituted by SI 2006/3430).

² ie subject to the Films Act 1985 Sch 1 para 4B(7). A film that is awarded all the points available under Sch 1 para 4B(3)(d) (language: see note 4 head (4)), Sch 1 para 4B(5) (where work carried out: see note 6) and Sch 1 para 4B(6) (personnel: see note 7) does not pass the cultural test unless (1) it is awarded at least 2 points under Sch 1 para 4B(3)(a) (setting: see note 4 head (1)); (2) it is awarded at least 2 points under sub-Sch 1 para

4B(3)(b) (characters: see note 4 head (2)); or (3) it is awarded 4 points under Sch 1 para 4B(3)(c) (story: see note 4 head (3)): Sch 1 para 4B(7) (as substituted: see note 1). As to the meaning of 'film' for these purposes see PARA 265 note 3.

3 Films Act 1985 Sch 1 para 4B(2) (as substituted: see note 1).

4 Points in respect of the content of the film are to be awarded as follows (Films Act 1985 Sch 1 para 4B(3) (as substituted: see note 1)):

- 52 (1) up to 4 points depending on the percentage of the film that is set in the United Kingdom as follows: (a) 4 points for at least 75%; (b) 3 points for at least 66%; (c) 2 points for at least 50%; (d) 1 point for at least 25%;
- 53 (2) up to 4 points depending on the number of the characters depicted in the film that are British as follows: (a) if there are more than three characters depicted in the film, 4 points if two or three of the three lead characters are British or, if only one of the three lead characters is British, 2 points if he is the first or second lead, 1 point if he is the third lead; (b) if there are only three characters depicted in the film, 4 points if two or three of them are British or, if only one of them is British, 2 points if he is the first or second lead, 1 point if he is the third lead; (c) if there are only two characters depicted in the film, 4 points if both of them are British, 2 points if one of them is; (d) if there is only one character depicted in the film, 4 points if he is British;
- 54 (3) 4 points if the film depicts a British story;
- 55 (4) up to 4 points depending on the percentage of the original dialogue that is recorded in the English language or in a recognised regional or minority language as follows: (a) 4 points for at least 75%; (b) 3 points for at least 66%; (c) 2 points for at least 50%; (d) 1 point for at least 25%.

'Recognised regional or minority language' means Welsh, Scottish-Gaelic, Irish, Scots, Ulster Scots or Cornish: Sch 1 para 4D(1) (as added: see note 1). A film is set in the United Kingdom if it is set in a country which is now part of the United Kingdom; and a film depicts a British story if the subject matter of the film or the underlying material on which the film is based is British: Sch 1 para 4D(3) (as so added). As to the meaning of 'United Kingdom' see PARA 16 note 8.

5 Films Act 1985 Sch 1 para 4B(4) (as substituted: see note 1).

6 Points in respect of work carried out in the making of the film are to be awarded as follows (Films Act 1985 Sch 1 para 4B(5) (as substituted: see note 1)):

- 56 (1) 2 points if at least 50% of the work carried out on any of the following is carried out in the United Kingdom: (a) shooting; (b) visual effects; (c) research and development; (d) special effects;
- 57 (2) 1 point if at least 50% of the work carried out on any of the following is carried out in the United Kingdom: (a) performing and recording the music score created for the film; (b) audio post production; (c) picture post production.

'Special effects' means artificial techniques or processes, which are not visual effects, used to create an illusion in a film; and 'visual effects' means digital alterations to a film's images: Sch 1 para 4D(1) (as added: see note 1).

For these purposes, the amount of work that is carried out in the United Kingdom or elsewhere is to be determined by reference to the amount of expenditure on the work: Sch 1 para 4D(4)(b) (substituted by SI 2006/3430). No points are to be awarded under any provision of the Films Act 1985 Sch 1 para 4B(5) in respect of work the expenditure on which is, in the opinion of the Secretary of State, insignificant in relation to the expenditure on all the work carried out in the making of the film: Sch 1 para 4D(5) (as added (see note 1); amended by SI 2006/3430).

7 Points in respect of the personnel involved in the making of the film are to be awarded as follows (Films Act 1985 Sch 1 para 4B(6) (as substituted: see note 1)):

- 58 (1) 1 point if the director (or, if there is more than one, the lead director) is a qualifying person;
- 59 (2) 1 point if at least one of the scriptwriters (or, if there are more than three, of the three lead scriptwriters) is a qualifying person;
- 60 (3) 1 point if at least one of the producers (or, if there are more than three, of the three lead producers) is a qualifying person;

- 61 (4) 1 point if the composer (or, if there is more than one, the lead composer) is a qualifying person;
- 62 (5) 1 point if at least one of the participants (or, if there are more than three, of the three lead participants) is a qualifying person;
- 63 (6) 1 point if at least 50% of the participants are qualifying persons;
- 64 (7) 1 point if at least one of the heads of department is a qualifying person;
- 65 (8) 1 point if at least 50% of the production crew are qualifying persons.

For these purposes, 'heads of department' means the lead cameraman, the lead sound recordist, the lead editor and the lead researcher: Sch 1 para 4D(1), (2)(b) (as added: see note 1). 'Participant' means a presenter, narrator, subject or other person who participates and appears in a documentary: Sch 1 para 4D(1) (as so added).

'Production crew' means all the persons directly involved in the production of a film who do not appear in the film; and 'qualifying person' means a citizen of, or a person ordinarily resident in, a member state: Sch 1 para 4D(1) (as so added). A state is to be treated as if it were a member state if it is a party to an agreement under the EC Treaty art 310, and the agreement requires a maker of a film who is ordinarily resident or registered in that state to be treated for the purposes of the Films Act 1985 Sch 1 in the same way as a maker of a film who is ordinarily resident or registered in a member state: Sch 1 para 4(4) (substituted by SI 2006/643).

8 Films Act 1985 Sch 1 para 4C(1) (as substituted: see note 1).

9 The subject to the Films Act 1985 Sch 1 para 4C(7). A film that is awarded all the points available under Sch 1 para 4C(3)(d) (language: see note 4 head (4), note 11), Sch 1 para 4C(5) (where work carried out: see note 13) and Sch 1 para 4C(6) (personnel: see note 14) does not pass the cultural test unless (1) it is awarded at least 2 points under Sch 1 para 4C(3)(a) (setting: see note 4 head (1), note 11); (2) it is awarded at least 2 points under Sch 1 para 4C(3)(b) (characters: see note 4 head (2), note 11); or (3) it is awarded 4 points under Sch 1 para 4C(3)(c) (story: see notes 4 head (3), 11): Sch 1 para 4C(7) (as substituted: see note 1).

10 Films Act 1985 Sch 1 para 4C(2) (as substituted: see note 1).

11 Points in respect of the content of the film are to be awarded in the same way as points in respect of the content of a documentary (see note 4): see the Films Act 1985 Sch 1 para 4C(3) (as substituted: see note 1), which is in identical terms to Sch 1 para 4B(3).

12 Films Act 1985 Sch 1 para 4C(4) (as substituted: see note 1).

13 Points in respect of work carried out in the making of the film are to be awarded as follows (Films Act 1985 Sch 1 para 4C(5) (as substituted: see note 1)):

- 66 (1) 2 points if at least 50% of the work carried out on any of the following is carried out in the United Kingdom: (a) shooting; (b) visual design; (c) layout and storyboarding; (d) visual effects; (e) special effects;
- 67 (2) 1 point if at least 50% of the work carried out on any of the following is carried out in the United Kingdom: (a) performing and recording the music score created for the film; (b) voice recording; (c) audio post production; (d) picture post production.

For these purposes, the amount of work that is carried out in the United Kingdom or elsewhere is to be determined by reference to the amount of expenditure on the work: Sch 1 para 4D(4)(b) (as substituted: see note 6). No points are to be awarded under any provision of Sch 1 para 4C(5) in respect of work the expenditure on which is, in the opinion of the Secretary of State, insignificant in relation to the expenditure on all the work carried out in the making of the film: Sch 1 para 4D(5) (as added and amended: see notes 1, 6).

14 Points in respect of the personnel involved in the making of the film are to be awarded as follows (Films Act 1985 Sch 1 para 4C(6) (as substituted: see note 1)):

- 68 (1) 1 point if the director (or, if there is more than one, the lead director) is a qualifying person;
- 69 (2) 1 point if at least one of the scriptwriters (or, if there are more than three, of the three lead scriptwriters) is a qualifying person;

- 70 (3) 1 point if at least one of the producers (or, if there are more than three, of the three lead producers) is a qualifying person;
- 71 (4) 1 point if the composer (or, if there is more than one, the lead composer) is a qualifying person;
- 72 (5) 1 point if at least one of the actors (or, if there are more than three, of the three lead actors) is a qualifying person;
- 73 (6) 1 point if at least 50% of the cast are qualifying persons;
- 74 (7) 1 point if at least one of the heads of department is a qualifying person;
- 75 (8) 1 point if at least 50% of the production crew are qualifying persons.

'Cast' means all the actors and performers but not the extras who appear in a film: Sch 1 para 4D(1) (as added: see note 1). For these purposes, 'heads of department' means the lead layout supervisor, the lead production designer, the lead character designer, the lead editor, the lead sound designer, the lead visual effects supervisor and the lead modelling supervisor: Sch 1 para 4D(1), (2)(c) (as so added).

15 Films Act 1985 Sch 1 para 4A(1) (as substituted: see note 1).

16 In subject to the Films Act 1985 Sch 1 para 4A(7). A film that is awarded all the points available under Sch 1 para 4A(3)(d) (language: see note 4 head (4), note 18), Sch 1 para 4A(5) (where work carried out: see note 20) and Sch 1 para 4A(6) (personnel: see note 21) does not pass the cultural test unless (1) it is awarded at least 2 points under Sch 1 para 4A(3)(a) (setting: see note 4 head (1), note 18)); (2) it is awarded at least 2 points under Sch 1 para 4A(3)(b) (characters: see note 4 head (2), note 18); or (3) it is awarded 4 points under Sch 1 para 4A(3)(c) (story: see note 4 head (3), note 18): Sch 1 para 4A(7) (as substituted: see note 1).

17 Films Act 1985 Sch 1 para 4A(2) (as substituted: see note 1).

18 Points in respect of the content of the film are to be awarded in the same way as points in respect of the content of a documentary (see note 4): see the Films Act 1985 Sch 1 para 4A(3) (as substituted: see note 1), which is in identical terms to Sch 1 para 4B(3).

19 Films Act 1985 Sch 1 para 4A(4) (as substituted: see note 1).

20 Points in respect of work carried out in the making of the film are to be awarded as follows (Films Act 1985 Sch 1 para 4A(5) (as substituted: see note 1)):

- 76 (1) 2 points if at least 50% of the work carried out on any of the following is carried out in the United Kingdom: (a) principal photography; (b) visual effects; (c) special effects;
- 77 (2) 1 point if at least 50% of the work carried out on any of the following is carried out in the United Kingdom: (a) performing and recording the music score created for the film; (b) audio post production; (c) picture post production.

For these purposes, the amount of work that is carried out in the United Kingdom or elsewhere is to be determined (1) for the purposes of Sch 1 para 4A(5)(a)(i) (principal photography: see head (1)(a) above), by reference to the number of days spent on the work; and for the purposes of the rest of Sch 1 para 4A(5), by reference to the amount of expenditure on the work: Sch 1 para 4D(4)(a), (b) (amended by SI 2006/3430). No points are to be awarded under any provision of the Films Act 1985 Sch 1 para 4A(5) in respect of work the expenditure on which is, in the opinion of the Secretary of State, insignificant in relation to the expenditure on all the work carried out in the making of the film: Sch 1 para 4D(5) (as added and amended: see notes 1, 6).

21 Points in respect of the personnel involved in the making of the film are to be awarded in the same way as points in respect of the personnel involved in the making of an animation (see note 14): see the Films Act 1985 Sch 1 para 4A(6) (as substituted: see note 1), which is in identical terms to Sch 1 para 4C(6). For these purposes, however, 'heads of department' means the lead cinematographer, the lead production designer, the lead costume designer, the lead editor, the lead sound designer, the lead visual effects supervisor and the lead hair and makeup supervisor: Sch 1 para 4D(1), (2)(a) (as added: see note 1).

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267. Certification of British films; confidentiality of information.

The statutory restriction on disclosure by Revenue and Customs officials¹ does not prevent disclosure to the Secretary of State² for the purposes of his functions³ with regard to certification of films as British films for the purposes of film tax relief⁴. Information so disclosed may also be disclosed to the UK Film Council⁵.

A person to whom information is disclosed under the above provisions may not otherwise disclose it except:

- 745 (1) for the purposes of the Secretary of State's functions with regard to certification of films as British films⁶;
- 746 (2) if the disclosure is authorised by an enactment;
- 747 (3) in pursuance of an order of a court;
- 748 (4) for the purposes of a criminal investigation or legal proceedings, whether civil or criminal, connected with the operation of the statutory provisions relating to the taxation of activities of film production companies⁷;
- 749 (5) with the consent of the Commissioners for Revenue and Customs; or
- 750 (6) with the consent of each person to whom the information relates⁸.

A person commits an offence if he discloses information about a person⁹ in contravention of the above provisions, and the person's identity is specified in the disclosure, or can be deduced from it¹⁰. It is, however, a defence for a person charged with such an offence to prove that he reasonably believed either that the disclosure was lawful, or that the information had already and lawfully been made available to the public¹¹. A prosecution for such an offence may be brought in England and Wales only by the Director of Revenue and Customs Prosecutions, or with the consent of the Director of Public Prosecutions¹².

1 I.e. the Commissioners for Revenue and Customs Act 2005 s 18(1): see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 919.

2 As to the Secretary of State see PARA 2.

3 I.e. his functions under the Films Act 1985 Sch 1: see PARAS 265-266. For these purposes, references to those functions do not include those functions in so far as they are exercised in relation to a film that commenced principal photography before 1 January 2007: Finance Act 2006 Sch 5 para 24(4) (amended by SI 2006/3265).

4 See the Finance Act 2006 Sch 5 para 24(1).

5 Finance Act 2006 Sch 5 para 24(2). As to the UK Film Council see PARA 25.

6 See note 3.

7 I.e. the operation of the Films Act 1985 Sch 1 or of the Finance Act 2006 Pt 3 Ch 3 (ss 31-53): see PARAS 264-266, 268 et seq.

8 Finance Act 2006 Sch 5 para 24(3).

9 For these purposes, 'information about a person' means revenue and customs information relating to a person within the meaning of the Commissioners for Revenue and Customs Act 2005 s 19(1) (wrongful disclosure: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 920): Finance Act 2006 Sch 5 para 25(2).

10 Finance Act 2006 Sch 5 para 25(1). A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding: (1) at the date at which this volume states the law, six months; or (2) as from a day to be appointed under the Criminal Justice Act 2003 s 336(3) for the coming into force of s 282 (not yet in force), 12 months, or (in either case) to a fine not exceeding the statutory maximum, or to both: see the Finance Act 2006 Sch 5 para 25(4), (7)(a).

11 Finance Act 2006 Sch 5 para 25(3).

12 Finance Act 2006 Sch 5 para 25(5).

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268. Entitlement to relief.

Film tax relief is available¹ in respect of expenditure on a film² that qualifies for the relief³ and that commences principal photography⁴ on or after 1 January 2007⁵. The film production company⁶ may, on making a claim⁷, make an additional deduction⁸ in calculating the profit or loss of its trade⁹ in respect of qualifying expenditure¹⁰ on the film¹¹.

A film production company may claim a film tax credit¹² for an accounting period in which it has a surrenderable loss¹³. Where a company is entitled to a film tax credit for a period, and makes a claim, the Commissioners for Revenue and Customs must pay to the company the amount of the credit¹⁴. An amount payable in respect of a film tax credit, or interest on a film tax credit¹⁵, may be applied in discharging any liability of the company to pay corporation tax; and to the extent that it is so applied the Commissioners' liability to make such payment is discharged¹⁶. Where the company's company tax return¹⁷ for the accounting period is inquired into by the Commissioners, no payment in respect of a film tax credit for that period need be made before the Commissioners' inquiries are completed¹⁸; in those circumstances the Commissioners may make a payment on a provisional basis of such amount as they think fit¹⁹. No payment need be made in respect of a film tax credit for an accounting period before the company has paid to the Commissioners any amount that it is required to pay for payment periods ending in that accounting period under PAYE regulations²⁰, in respect of visiting performers²¹, or in respect of Class 1 national insurance contributions²².

A payment in respect of film tax credit is not income of the company for any tax purpose²³; and the amount of a film production company's trading loss for an accounting period is reduced by any amount surrendered for a film tax credit²⁴.

To the extent that a transaction is attributable to arrangements²⁵ entered into wholly or mainly for a disqualifying purpose, it is to be disregarded in determining for any period any additional deduction to which a company is entitled under the above provisions, and any film tax credit to which a company is entitled²⁶. Arrangements are entered into wholly or mainly for a disqualifying purpose if their main object, or one of their main objects, is to enable a company to obtain:

- 751 (1) an additional deduction under the above provisions to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled; or
- 752 (2) a film tax credit to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled²⁷.

The above provisions are applied, with modifications, to films that commenced principal photography before 1 January 2007 but were not completed before that date²⁸.

1 le in accordance with the Finance Act 2006 Sch 5: see the text and notes 2-27; and PARAS 265, 269-270.

2 As to the meaning of 'film' see PARA 262 note 2.

3 See the Finance Act 2006 s 38; and PARA 264.

4 As to the meaning of 'principal photography' see PARA 262 note 4.

5 Finance Act 2006 Sch 5 para 1(1) (amended by SI 2006/3265).

6 As to the meaning of 'film production company' see PARA 262.

7 As to claims for relief see PARA 269.

8 For the first period of account during which the trade is carried on the amount of the additional deduction is given by multiplying E by R, where E is (1) so much of the qualifying expenditure (see note 10) as is UK expenditure; or (2) if less, 80% of the total amount of qualifying expenditure; and R is the rate of enhancement (see the Finance Act 2006 Sch 5 para 5): Sch 5 para 4(1). For any period of account after the first the amount of the additional deduction is given by subtracting, from E multiplied by R, P, where E is (a) so much of the qualifying expenditure incurred to date as is UK expenditure; or (b) if less, 80% of the total amount of qualifying expenditure incurred to date; R is the rate of enhancement; and P is the amount of the additional deduction given in the previous period or, as the case may be, the aggregate amount of the additional deductions given in previous periods: Sch 5 para 4(2). The Treasury may by regulations amend the percentage stated in Sch 5 para 4(1) or (2); but no such regulations may be made unless a draft of the regulations has been laid before and approved by a resolution of the House of Commons: Sch 5 para 4(3), (4). As to the meaning of 'UK expenditure' see PARA 264 note 15.

The rate of enhancement is, for a limited-budget film, 100%, and for a film other than a limited-budget film, 80%: Sch 5 para 5. A 'limited-budget film' means a film whose core expenditure is £20 million or less: s 34(2). In determining whether a film is a limited-budget film, any core expenditure that is incurred by a person under or as a result of a transaction entered into directly or indirectly between that person and a connected person, and that might have been expected to have been of a greater amount ('the arm's length amount') if the transaction had been between independent persons dealing at arm's length, is treated as having been of an amount equal to the arm's length amount: s 34(3). As to the meaning of 'core expenditure' see PARA 264 note 12. For the purposes of s 34(3), whether a person is connected with another person is determined in accordance with the Income and Corporation Taxes Act 1988 s 839 (connected persons: see **INCOME TAXATION** vol 23(2) (Reissue) PARA 1258): Finance Act 2006 s 34(4) (substituted by the Income Tax Act 2007 Sch 1 Pt 2 paras 610, 611).

9 References in the Finance Act 2006 Sch 5 Pt 1 (paras 1-14) to the trade of a film production company are to the trade that it is treated as carrying on under Sch 4 (see PARA 263): Sch 5 para 1(2).

10 Qualifying expenditure for this purpose means core expenditure on the film that falls to be taken into account under the Finance Act 2006 Sch 4 in calculating the profit or loss of the trade for tax purposes: Sch 5 para 3(1). The Treasury may by regulations (1) amend Sch 5 para 3(1); (2) provide that expenditure of a specified description is or is not to be regarded for the purposes of Sch 5 Pt 1 as qualifying expenditure; but no such regulations may be made unless a draft of the regulations has been laid before and approved by a resolution of the House of Commons: Sch 5 para 3(2), (3).

In determining for the purposes of Sch 5 Pt 1 the amount of costs incurred on a film at the end of a period of account, no account is to be taken of any amount that has not been paid four months after the end of that period: Sch 5 para 12(1). This is without prejudice to the operation of Sch 4 para 9 (general rules as to when costs are taken to be incurred: see PARA 263): Sch 5 para 12(2).

11 Finance Act 2006 Sch 5 para 2.

12 The amount of the film tax credit to which a company is entitled for a period is given by multiplying L by R, where L is the amount of the loss surrendered (see note 13), and R is the payable credit rate: Finance Act 2006 Sch 5 para 7(2). The payable credit rate is, for a limited-budget film, 25%, and for a film other than a limited-budget film, 20%: Sch 5 para 8.

13 Finance Act 2006 Sch 5 para 6(1). The amount of the company's surrenderable loss in any period is equal to whichever is the less of (1) the amount of its trading loss for that period; and (2) the available qualifying expenditure: Sch 5 para 6(2). For the first period of account during which the trade is carried on, the available qualifying expenditure is the amount that is E for that period for the purposes of Sch 5 para 4(1) (see note 8): Sch 5 para 6(3). For any period of account after the first, the available qualifying expenditure is given by E minus S, where E is the amount that is E for that period for the purposes of Sch 5 para 4(2) (see note 8), and S is the amount surrendered in the previous period, or (as the case may be) the aggregate amount of the amounts surrendered in previous periods, under Sch 5 para 7: Sch 5 para 6(4). The company may surrender the whole or part of its surrenderable loss in a period: Sch 5 para 7(1). As to accounting periods see the Income and Corporation Taxes Act 1988 s 12; and **INCOME TAXATION** vol 23(1) (Reissue) PARAS 837-838.

14 Finance Act 2006 Sch 5 para 9(1).

15 le under the Income and Corporation Taxes Act 1988 s 826: see **INCOME TAXATION** vol 23(2) (Reissue) PARA 1809.

- 16 Finance Act 2006 Sch 5 para 9(2).
- 17 As to the meaning of 'company tax return' see PARA 262 note 14.
- 18 See the Finance Act 1998 Sch 18 para 32; and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1675.
- 19 Finance Act 2006 Sch 5 para 9(3).
- 20 As to PAYE regulations see **INCOME TAXATION** vol 23(1) (Reissue) PARA 755.
- 21 Ie under the Income Tax Act 2007 s 966 (see **INCOME TAXATION**): Finance Act 2006 Sch 5 para 14.
- 22 Finance Act 2006 Sch 5 para 9(4) (amended by the Income Tax Act 2007 Sch 1 Pt 2 paras 610, 623).
'National insurance contributions' means contributions under the Social Security Contributions and Benefits Act 1992 Pt I (ss 1-19A) (see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 31 et seq) or the corresponding Northern Ireland legislation: see the Finance Act 2006 Sch 5 para 14.
- 23 Finance Act 2006 Sch 5 para 10.
- 24 Finance Act 2006 Sch 5 para 11.
- 25 For these purposes, 'arrangements' includes any scheme, agreement or understanding, whether or not legally enforceable: Finance Act 2006 Sch 5 para 13(3).
- 26 Finance Act 2006 Sch 5 para 13(1).
- 27 Finance Act 2006 Sch 5 para 13(2).
- 28 See the Corporation Tax (Taxation of Films) (Transitional Provisions) Regulations 2007, SI 2007/1050, regs 3, 10, 13. As to when a film is completed see PARA 262 note 5.

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269. Claims for relief.

A claim for film tax relief¹ can only be made by being included in a company tax return². Such a claim must be made by being included in the claimant company's tax return for the accounting period³ for which the claim is made⁴. It may be included in the return originally made or by amendment⁵. Such a claim must specify the amount of the relief claimed, which must be an amount quantified at the time the claim is made⁶.

A claim for film tax relief may be amended or withdrawn by the claimant company only by amending its company tax return⁷.

A claim for film tax relief may be made, amended or withdrawn at any time up to the first anniversary of the filing date for the company tax return of the claimant company for the accounting period for which the claim is made⁸. It may, however, be made, amended or withdrawn at a later date if an officer of Revenue and Customs allows it⁹.

The company is liable to a penalty where it fraudulently or negligently makes a claim for a film tax credit that is incorrect, or discovers that a claim for a film tax credit made by it (neither fraudulently nor negligently) is incorrect and does not remedy the error without unreasonable delay¹⁰. The penalty is an amount not exceeding the excess film tax credit claimed, that is, the difference between the amount, if any, of the film tax credit to which the company is entitled for the accounting period to which the claim relates, and the amount of the film tax credit claimed by the company for that period¹¹.

1 le a claim to which the Finance Act 1998 Sch 18 Pt 9D (paras 83S-83X) applies: see the text and notes 3-11.

2 See the Finance Act 1998 Sch 18 para 10(4) (added by the Finance Act 2006 Sch 5 para 27). As to the meaning of 'company tax return' see PARA 262 note 14.

3 As to accounting periods see the Income and Corporation Taxes Act 1988 s 12; and **INCOME TAXATION** vol 23(1) (Reissue) PARAS 837-838.

4 Finance Act 1998 Sch 18 paras 83S, 83T(1) (Sch 18 paras 83S-83X added by the Finance Act 2006 Sch 5 para 29).

5 Finance Act 1998 Sch 18 para 83T(2) (as added: see note 4).

6 Finance Act 1998 Sch 18 para 83U (as added: see note 4).

7 Finance Act 1998 Sch 18 para 83V (as added: see note 4).

8 Finance Act 1998 Sch 18 para 83W(1) (as added: see note 4).

9 Finance Act 1998 Sch 18 para 83W(2) (as added: see note 4).

10 Finance Act 1998 Sch 18 para 83X(3) (sic) (as added: see note 4).

11 Finance Act 1998 Sch 18 para 83X(4) (sic) (as added: see note 4).

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270. Provisional entitlement to relief.

The film production company¹ is not entitled to relief² for an interim accounting period³ unless its company tax return⁴ for the period is accompanied by an interim certificate⁵. If an interim certificate ceases to be in force, otherwise than on being superseded by a final certificate⁶, or is revoked, the company is not entitled to relief for any period for which its entitlement depended on the certificate, and must amend accordingly its company tax return for any such period⁷. If the film is completed by the company⁸ its company tax return for the final accounting period⁹ must be accompanied by a final certificate¹⁰; if that requirement is met, the final certificate has effect for the final accounting period and for any interim accounting period and if that requirement is not met, the company is not entitled to relief for any period, and must amend accordingly its company tax return for any period for which relief was claimed¹¹. If the company abandons film-making activities in relation to the film, its company tax return for the final accounting period may be accompanied by an interim certificate and the abandonment of film-making activities does not affect any entitlement to relief in that or any previous accounting period¹². If a final certificate is revoked, the company is not entitled to relief for any period, and must amend accordingly its company tax return for any period for which relief was claimed¹³.

The company is not entitled to relief for an interim accounting period unless its company tax return for the period states the amount of planned core expenditure¹⁴ on the film that is UK expenditure¹⁵, and that amount is such as to indicate that the UK expenditure condition¹⁶ will be met on completion of the film¹⁷. If those requirements are met, the company is provisionally treated in relation to that period as if that condition was met¹⁸. If such a statement is made but it subsequently appears that condition will not be met on completion of the film, the company is not entitled to relief for any period for which its entitlement depended on such a statement, and must amend accordingly its company tax return for any such period¹⁹. When the film is completed or, as the case may be, the company abandons film-making activities in relation to it, the company tax return for the final accounting period must state that the film has been completed or, as the case may be, the company has abandoned film-making activities in relation to it, and must be accompanied by a final statement of the amount of core expenditure on the film that is UK expenditure²⁰. If the return shows that the UK expenditure condition²¹ is not met, the company is not entitled to relief for any period, and must amend accordingly its company tax return for any period for which relief was claimed²².

The company is not entitled to film tax relief for an interim accounting period on the basis that the film is a limited-budget film²³ unless its company tax return for the period states the amount of planned core expenditure on the film, and that amount is such as to indicate that the relevant statutory condition²⁴ will be met on completion of the film²⁵. In that case, the film is provisionally treated in relation to that period as if that condition was met²⁶. If it subsequently appears that the condition will not be met on completion of the film, the company is not entitled to film tax relief for any period on the basis that the film is a limited-budget film, and must amend accordingly its company tax return for any such period for which relief has been claimed on that basis²⁷. When the film is completed or, as the case may be, the company abandons film-making activities in relation to it, its company tax return for the final accounting period must state that the film has been completed or, as the case may be, the company has abandoned film-making activities in relation to it, and must be accompanied by a final statement of the core expenditure on the film²⁸. If the return shows that the film is not a limited-budget film, or, as the case may be, that having regard to the proportion of work on the

film that was completed, it would not have been a limited-budget film if it had been completed, the company is not entitled to film tax relief for any period on the basis that the film is a limited-budget film, and must amend accordingly its company tax return for any period for which such relief was claimed on that basis²⁹.

Any amendment or assessment necessary to give effect to the above provisions may be made notwithstanding any limitation on the time within which an amendment or assessment may normally be made³⁰.

1 As to the meaning of 'film production company' see PARA 262.

2 For these purposes, 'relief' means (1) film tax relief; or (2) relief under the Finance Act 2006 s 45 (transfer of terminal losses from one qualifying film to another: see PARA 273): Sch 5 para 30(1).

3 'Interim accounting period' means any earlier accounting period of the company during which film-making activities are carried on in relation to the film: Finance Act 2006 Sch 5 para 30(1). As to the meaning of 'film-making activities' see PARA 263 note 12. As to accounting periods see the Income and Corporation Taxes Act 1988 s 12; and **INCOME TAXATION** vol 23(1) (Reissue) PARAS 837-838.

4 As to the meaning of 'company tax return' see PARA 262 note 14.

5 Finance Act 2006 Sch 5 para 31(1). 'Interim certificate' refers to a certificate under the Films Act 1985 Sch 1 (certification of films as British films for the purposes of film tax relief: see PARA 265): Finance Act 2006 Sch 5 para 30(1).

6 'Final certificate' refers to a certificate under the Films Act 1985 Sch 1 (certification of films as British films for the purposes of film tax relief: see PARA 265): Finance Act 2006 Sch 5 para 30(1).

7 Finance Act 2006 Sch 5 para 31(2).

8 As to when a film is completed see PARA 262 note 5.

9 'The final accounting period' means the accounting period of the company in which (1) the film is completed; or (2) where the company does not complete the film, it abandons film-making activities in relation to it: Finance Act 2006 Sch 5 para 30(1). The company tax return of the company for the final accounting period must state that the film has been completed or, as the case may be, that the company has abandoned film-making activities in relation to it: Sch 5 para 30(2).

10 Finance Act 2006 Sch 5 para 31(3)(a).

11 Finance Act 2006 Sch 5 para 31(3)(b), (c).

12 Finance Act 2006 Sch 5 para 31(4).

13 Finance Act 2006 Sch 5 para 31(5).

14 As to the meaning of 'core expenditure' see PARA 264 note 12.

15 As to the meaning of 'UK expenditure' see PARA 264 note 15.

16 Ie the condition in the Finance Act 2006 s 41: see PARA 264.

17 Finance Act 2006 Sch 5 para 32(1)(1), (b).

18 Finance Act 2006 Sch 5 para 32(1).

19 Finance Act 2006 Sch 5 para 32(2).

20 Finance Act 2006 Sch 5 para 32(3)(a).

21 See note 16.

22 Finance Act 2006 Sch 5 para 32(3)(b).

23 As to the meaning of 'limited-budget film' see PARA 268 note 8.

24 le the condition in the Finance Act 2006 s 34(2) that the core expenditure is £20 million or less: see PARA 268 note 8.

25 Finance Act 2006 Sch 5 para 33(1)(a), (b).

26 Finance Act 2006 Sch 5 para 33(1).

27 Finance Act 2006 Sch 5 para 33(2).

28 Finance Act 2006 Sch 5 para 33(3)(a).

29 Finance Act 2006 Sch 5 para 33(3)(b).

30 Finance Act 2006 Sch 5 para 34.

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(C) FILM LOSSES

271. Restriction on use of losses while film in production.

The Finance Act 2006 makes provision to restrict the use that may be made of a film production company's¹ trading loss for an accounting period² before:

- 753 (1) that in which the film³ is completed⁴; or
- 754 (2) where the company does not complete the film, that in which it abandons film-making activities⁵ in relation to the film⁶.

A trading loss for such a period is not available for loss relief⁷ except to the extent that it may be carried forward⁸ to be set against profits of the same trade in a later period⁹.

1 As to the meaning of 'film production company' see PARA 262.

2 As to accounting periods see the Income and Corporation Taxes Act 1988 s 12; and **INCOME TAXATION** vol 23(1) (Reissue) PARAS 837-838.

3 As to the meaning of 'film' see PARA 262 note 2.

4 As to when a film is completed see PARA 262 note 5.

5 As to the meaning of 'film-making activities' see PARA 263 note 12.

6 Finance Act 2006 s 43(1).

7 For these purposes, 'loss relief' includes any means by which a loss might be used to reduce the amount in respect of which the film production company, or any other person, is chargeable to tax: Finance Act 2006 s 43(3).

8 I.e. under the Income and Corporation Taxes Act 1988 s 393(1); see **INCOME TAXATION** vol 23(1) (Reissue) PARA 864.

9 Finance Act 2006 s 43(2).

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272. Use of losses in later periods.

The following provisions apply:

- 755 (1) to the accounting period¹ in which the film² is completed³, or, if the film production company⁴ does not complete the film, in which it abandons film-making activities⁵ in relation to the film; and
- 756 (2) to any subsequent accounting period during which the trade⁶ continues⁷.

They do not, however, apply to a loss to the extent that it is carried forward or surrendered⁸ under the provisions relating to terminal losses⁹.

Where a trading loss is carried forward to any such period¹⁰ from an earlier period in relation to which the statutory restriction on the use of losses while a film is in production¹¹ applied, so much, if any, of the loss as is not attributable to film tax relief¹² may be treated for the purposes of loss relief¹³ as if it were a loss incurred in the period to which it is carried forward¹⁴.

The amount of the trading loss for an accounting period to which these provisions apply that may be set against other profits of the same or an earlier period¹⁵ or surrendered as group relief¹⁶ is restricted to the amount, if any, that is not attributable to film tax relief¹⁷.

1 As to accounting periods see the Income and Corporation Taxes Act 1988 s 12; and **INCOME TAXATION** vol 23(1) (Reissue) PARAS 837-838.

2 As to the meaning of 'film' see PARA 262 note 2.

3 As to when a film is completed see PARA 262 note 5.

4 As to the meaning of 'film production company' see PARA 262.

5 As to the meaning of 'film-making activities' see PARA 263 note 12.

6 As to the treatment of the activities of film production companies as a separate trade for tax purposes see PARA 263.

7 Finance Act 2006 s 44(1).

8 Ie under the Finance Act 2006 s 45: see PARA 273.

9 See the Finance Act 2006 s 44(6).

10 Ie under the Income and Corporation Taxes Act 1988 s 393(1): see **INCOME TAXATION** vol 23(1) (Reissue) PARA 864.

11 Ie the Finance Act 2006 s 43: see PARA 271.

12 For these purposes, the amount of a trading loss in any period that is attributable to film tax relief is calculated by deducting from the total amount of the loss the amount there would have been if there had been no additional deduction under the Finance Act 2006 Sch 5 (see PARAS 268-270) in that or any earlier period: s 44(4).

13 For these purposes, 'loss relief' includes any means by which a loss might be used to reduce the amount in respect of which the film production company, or any other person, is chargeable to tax: Finance Act 2006 s 44(5).

14 Finance Act 2006 s 44(2).

15 Ie under the Income and Corporation Taxes Act 1988 s 393A: see **INCOME TAXATION** vol 23(1) (Reissue) PARA 864.

16 Ie under the Income and Corporation Taxes Act 1988 s 403: see **INCOME TAXATION** vol 23(2) (Reissue) PARA 961.

17 Finance Act 2006 s 44(3).

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273. Terminal losses.

Where:

- 757 (1) a film production company¹ ('company A') ceases to carry on a trade² in relation to a qualifying film³; and
 758 (2) if the company had not ceased to carry on the trade, it could have carried forward an amount⁴ to be set against profits of the same trade in a later period (the 'terminal loss'),

then if on cessation of the trade company A is carrying on a trade in relation to another qualifying film, it may on making a claim elect that the terminal loss or a part of it is to be treated as if it were a loss brought forward⁵ to be set against profits of that other trade in the accounting period⁶ following that at the end of which the cessation takes place⁷.

If on cessation of the trade carried on by company A there is another film production company ('company B') which:

- 759 (a) is carrying on a trade in relation to a qualifying film (its 'qualifying trade');
 and
 760 (b) is in the same group as company A for the purposes of group relief⁸,

the whole or part of the terminal loss may be surrendered by company A to company B⁹. On the making of a claim by company B the amount surrendered is to be treated as if it were a loss brought forward by that company¹⁰ to be set against the profits of its qualifying trade for the accounting period of that company following that in which or at the end of which the cessation takes place of the qualifying trade carried on by company A¹¹. The Treasury may, in relation to the surrender of a loss under these provisions and the resulting claim, make provision by regulations corresponding, subject to such adaptations or other modifications as appear to it to be appropriate, to that made¹² in relation to claims for group relief in company tax returns¹³.

1 As to the meaning of 'film production company' see PARA 262.

2 For these purposes, references to the trade carried on by a film production company in relation to a film are to the trade that it is treated as carrying on under the Finance Act 2006 Sch 4 (see PARA 263): s 45(6)(a).

3 For these purposes, references to a qualifying film are to a film that meets the conditions for film tax relief (see the Finance Act 2006 s 38; and PARA 264): s 45(6)(b).

4 I.e. under the Income and Corporation Taxes Act 1988 s 393(1): see **INCOME TAXATION** vol 23(1) (Reissue) PARA 864.

5 See note 4.

6 As to accounting periods see the Income and Corporation Taxes Act 1988 s 12; and **INCOME TAXATION** vol 23(1) (Reissue) PARAS 837-838.

7 Finance Act 2006 s 45(1), (2).

8 le for the purposes of the Income and Corporation Taxes Act 1988 Pt X Ch IV (ss 402-413): see **INCOME TAXATION** vol 23(2) (Reissue) PARA 951 et seq.

9 Finance Act 2006 s 45(3).

10 See note 4.

11 Finance Act 2006 s 45(4).

12 le by the Finance Act 1998 Sch 18 Pt VIII (paras 66-77A) (company tax returns: claims for group relief): see **INCOME TAXATION** vol 23(2) (Reissue) PARA 975.

13 Finance Act 2006 s 45(5). As to the exercise of this power see the Corporation Tax (Surrender of Terminal Losses on Films and Claims for Relief) Regulations 2007, SI 2007/678, regs 3-15.

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(D) WITHDRAWAL OF PREVIOUS RELIEFS AND TRANSITIONAL PROVISIONS

274. Withdrawal of previous corporation tax and income tax reliefs.

Previous corporation tax reliefs in relation to:

- 761 (1) the treatment of expenditure on the production or acquisition¹ of film² do not apply:
- 37
52. (a) to production expenditure on a film³ that commences principal photography⁴ on or after 1 January 2007;
53. (b) to acquisition expenditure on a film that commences principal photography on or after 1 January 2007, or that is incurred on or after 1 October 2007 on a film, whenever made⁵.
- 38
- 762 (2) preliminary expenditure⁶ do not apply to expenditure incurred after 19 July 2006⁷;
- 763 (3) special reliefs for British films⁸ do not apply:
- 39
54. (a) to production expenditure on a film that commences principal photography on or after 1 January 2007;
55. (b) to acquisition expenditure on a film that commences principal photography on or after 1 January 2007, or that is incurred on or after 1 October 2007⁹.
- 40

Previous income tax reliefs in relation to the matters set out in heads (1) to (3) above are similarly disapplied¹⁰.

The above provisions are applied, with modifications, to films that commenced principal photography before 1 January 2007 but were not completed before that date¹¹.

1 References in the Finance Act 2006 s 46 (see the text and notes 2-9) to expenditure on the acquisition of a film, or to sums received from the disposal of a film, are to expenditure on the acquisition of, or sums received from the disposal of, the original master version of the film: s 46(4). For this purpose, 'original master version' means the original negative, tape or disc; references to the original master version of a film include the original master version of the film soundtrack (if any); and references to the original master version include any rights in the original master version that are held or acquired with it: s 46(5).

2 I.e. the Finance (No 2) Act 1992 ss 40A-40D (repealed): see **INCOME TAXATION** vol 23(1) (Reissue) PARA 267.

3 As to the meaning of 'film' see PARA 262 note 2.

4 As to the meaning of 'principal photography' see PARA 262 note 4.

5 Finance Act 2006 s 46(1) (amended by SI 2006/3265).

6 I.e. the Finance (No 2) Act 1992 s 41 (repealed): see **INCOME TAXATION** vol 23(1) (Reissue) PARA 268.

7 Finance Act 2006 s 46(2).

8 See the Finance (No 2) Act 1992 s 42 and the Finance (No 2) Act 1997 s 48 (both repealed): see **INCOME TAXATION** vol 23(1) (Reissue) PARA 269.

9 Finance Act 2006 s 46(3) (amended by SI 2006/3265).

10 See the Finance Act 2006 s 47, disapplying the Income Tax (Trading and Other Income) Act 2005 ss 134, 135 (treatment of expenditure on production or acquisition of film); s 137 (preliminary expenditure); and ss 138-144 (special reliefs for British films). See further **INCOME TAXATION**.

11 See the Corporation Tax (Taxation of Films) (Transitional Provisions) Regulations 2007, SI 2007/1050, regs 3, 6, 7, 13.

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275. Application of provisions to certain films already in production.

The Treasury may make provision by regulations for the application of the provisions of the Finance Act 2006 relating to taxation of the activities of film production companies¹, and of any enactment amended by those provisions, in relation to films² that commenced principal photography³ before 1 January 2007 but were not completed before that date⁴. The regulations may provide for such adaptations and modifications of the relevant statutory provisions, of any enactment amended by them and of any other provision of the Corporation Tax Acts, as appear to the Treasury appropriate for that purpose⁵.

The Corporation Tax (Taxation of Films) (Transitional Provisions) Regulations 2007⁶, which are made in the exercise of this power, have been discussed in the previous paragraphs in the contexts in which they arise⁷.

1 Ie the Finance Act 2006 Pt 3 Ch 3 (ss 31-53): see PARA 262 et seq.

2 As to the meaning of 'film' see PARA 262 note 2.

3 As to the meaning of 'principal photography' see PARA 262 note 4.

4 Finance Act 2006 s 52(1) (amended by SI 2006/3265).

5 Finance Act 2006 s 52(2). The regulations may (1) provide that the provisions of Pt 3 Ch 3, or any specified provisions of Pt 3 Ch 3, are to have effect as if they had been in force at all material times; (2) require or authorise the making or amendment of returns, or the making of assessments, in relation to past accounting periods or tax years (whether before or after the commencement of Pt 3 Ch 3); (3) authorise the making of any such return, amendment or assessment notwithstanding any limitation on the time within which a return, amendment or assessment may normally be made: s 52(3). No such regulations may be made unless a draft of them has been laid before and approved by a resolution of the House of Commons: s 52(4).

6 Ie the Corporation Tax (Taxation of Films) (Transitional Provisions) Regulations 2007, SI 2007/1050, which were made by the Treasury under the Finance Act 2006 s 52 and which came into force on 29 March 2007: see reg 1(2).

7 See PARA 262 et seq.

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(vi) Statutory Control of Video Works and Recordings

A. SCHEME OF CONTROL

276. Introduction.

There is statutory regulation¹ of the distribution of video recordings with the object of limiting the extent to which they may be allowed to depict, or to be designed to stimulate:

- 764 (1) a human sexual activity or acts of force or restraint associated with such activity;
- 765 (2) mutilation or torture of, or other acts of gross violence towards, humans or animals;
- 766 (3) human genital organs or human urinary or excretory functions;
- 767 (4) techniques likely to be useful in the commission of offences; or
- 768 (5) criminal activity².

For these purposes, 'video recording' means any disc, magnetic tape or any other device capable of storing data electronically containing information by the use of which the whole or a part of a video work³ may be produced⁴.

The regulation of video recordings is effected by a system of classification and labelling⁵ and the prohibition, subject to exemptions⁶, of the supply⁷ of recordings:

- 769 (a) without a classification certificate⁸;
- 770 (b) to a person who has not attained a specified age⁹;
- 771 (c) elsewhere than in specified premises¹⁰; or
- 772 (d) in breach of regulations as to labelling¹¹.

The local weights and measures authority¹² has responsibility for enforcement of the scheme in its area¹³.

It is an offence to distribute, show or play a recording which incites to racial or religious hatred¹⁴. As from a day to be appointed¹⁵, it is also an offence to distribute, show or play a recording which incites to hatred on the grounds of sexual orientation¹⁶.

1 See the Video Recordings Act 1984; and PARA 277 et seq. The Act applies to Northern Ireland: s 23(3).

2 This object, although not specifically stated as such in the Video Recordings Act 1984, is to be inferred from s 2(2), (3) (see PARA 277), with support from a categorical explanation on the part of the mover of the second reading of the Bill in the House of Commons that the Bill was aimed at what had become known as 'video nasties': 48 HC Official Report (6th series), 11 November 1983, col 523.

3 'Video work' means any series of visual images (with or without sound) produced electronically by the use of information contained on any disc, magnetic tape or any other device capable of storing data electronically, and shown as a moving picture: Video Recordings Act 1984 s 1(1), (2) (amended by the Criminal Justice and Public Order Act 1994 Sch 9 para 22). The display of a series of computer images, if the sequence is long enough to show continuing movement, can properly be described as a 'moving picture' and it is inappropriate to

take into account the brevity of the display: *Meechie v Multi-Media Marketing (Canterbury) Ltd* (1995) 94 LGR 474, sub nom *Kent County Council v Multi Media Marketing (Canterbury) Ltd* (1995) Times, 9 May, DC. A video recording contains a video work for the purposes of the Video Recordings Act 1984 if it contains information by the use of which the whole or a part of the work may be produced, but where a video work includes any extract from another video work the extract is not regarded as part of the other work: s 22(2).

4 Video Recordings Act 1984 s 1(3) (amended by the Criminal Justice and Public Order Act 1994 Sch 9 para 22, Sch 11).

5 See the Video Recordings Act 1984 ss 7, 8; and PARAS 280, 283.

6 See the Video Recordings Act 1984 s 2 (exempted works), and s 3 (exempted supplies); and PARAS 277-278.

7 'Supply' means supply in any manner, whether or not for reward, and, therefore, includes supply by way of sale, letting on hire, exchange or loan; and references to a supply are to be interpreted accordingly: Video Recordings Act 1984 s 1(4). Possession for the purpose of supply is also prohibited: see s 10; and PARA 285. There can be a supply within the meaning of s 1(4) even where there is no binding contract to supply; the nature of the underlying transaction is irrelevant: *Interfact Ltd v Liverpool City Council*, *Pabo v Liverpool City Council* [2005] EWHC 995 (Admin), [2005] LLR 622, [2005] 1 WLR 3118.

8 See the Video Recordings Act 1984 ss 9, 10, 14; and PARAS 284-285, 289.

9 See the Video Recordings Act 1984 s 11; and PARA 286.

10 See the Video Recordings Act 1984 s 12; and PARA 287.

11 See the Video Recordings Act 1984 s 13; and PARA 288.

12 As to weights and measures authorities see **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 20.

13 See the Video Recordings Act 1984 s 16A; and PARA 290.

14 See the Public Order Act 1986 ss 21, 29E; and PARAS 292-293.

15 Ie as from a day to be appointed under the Criminal Justice and Immigration Act 2008 s 153(7). At the date at which this volume states the law, no such day had been appointed.

16 See PARA 293.

UPDATE

276-291 Introduction ... Powers of entry, search, seizure and arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

276 Introduction

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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277. Exempted works.

Subject to the exceptions set out below, a video work¹ is an exempted work² if, taken as a whole³, it is designed to inform, educate or instruct⁴, is concerned with sport, religion or music⁵, or is a video game⁶. Such a work is not an exempted work if, to any significant extent:

- 773 (1) it depicts, or is likely to any significant extent to stimulate or encourage, a human sexual activity⁷ or acts of force or restraint associated with such activity⁸;
- 774 (2) it depicts, or to any extent is likely to stimulate or encourage, mutilation or torture of, or other acts of gross violence towards, humans or animals⁹;
- 775 (3) it depicts human genital organs or human urinary or excretory functions¹⁰;
- 776 (4) it depicts techniques likely to be useful in the commission of offences¹¹; or
- 777 (5) it depicts criminal activity which is likely to any significant extent to stimulate or encourage the commission of offences¹².

1 As to the meaning of 'video work' see PARA 276 note 3.

2 Ie for the purposes of the Video Recordings Act 1984: see s 2(1). As to exempted supplies see PARA 278.

3 Video Recordings Act 1984 s 2(1) (s 2(1), (2) amended, and s 2(3) added, by the Criminal Justice and Public Order Act 1994 s 89(2), (3), (4)).

4 Video Recordings Act 1984 s 2(1)(a).

5 Video Recordings Act 1984 s 2(1)(b).

6 Video Recordings Act 1984 s 2(1)(c). Most video games are not, therefore, classified by the British Board of Film Classification; but they may carry an age rating under the voluntary Pan-European Game Information age rating system. Following publication of the Byron report (*Safer Children in a Digital World*, March 2008, Dr Tanya Byron) the government announced on 31 July 2008 that it was launching a public consultation on reform of the classification system for video games.

It has been held that where a video game contains a short clip of female nudity, the clip amounts to a 'video work' and does not fall under the exemption for video games in the Video Recordings Act 1984 s 2(1)(c): *Meechie v Multi-Media Marketing (Canterbury) Ltd* (1995) 94 LGR 474, sub nom *Kent County Council v Multi Media Marketing (Canterbury) Ltd* (1995) Times, 9 May, DC.

7 'Human sexual activity' is not confined to acts of copulation or masturbation and a video work can be said to stimulate or encourage such activity even if it is only mildly suggestive and cannot be regarded as hard core pornography or as offensive: *Meechie v Multi-Media Marketing Ltd* (1995) 94 LGR 474, sub nom *Kent County Council v Multi Media Marketing (Canterbury) Ltd* (1995) Times, 9 May, DC.

8 Video Recordings Act 1984 s 2(2)(a) (as amended: see note 3).

9 Video Recordings Act 1984 s 2(2)(b) (as amended: see note 3).

10 Video Recordings Act 1984 s 2(2)(c).

11 Video Recordings Act 1984 s 2(2)(d) (as added: see note 3).

12 Video Recordings Act 1984 s 2(3) (as added: see note 3).

UPDATE

276-291 Introduction ... Powers of entry, search, seizure and arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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278. Exempted supplies.

There are nine different forms of exempted supply of video recordings¹, eight of general application and the ninth applying only to recordings intended for supply in a licensed sex shop². They are as follows:

- 778 (1) supply³ which is neither a supply for reward nor a supply in the course or furtherance of a business⁴;
- 779 (2) supply by a person (the 'original supplier') who supplies a recording to a person who, in the course of business⁵, makes video works⁶ or supplies video recordings, provided that the supply is not made with a view to its eventual supply to the public⁷, or is made with a view to its eventual supply to the original supplier⁸;
- 780 (3) subject to restrictions as to the nature of the work⁹, supply of a video recording containing only a video work designed to provide a record of an event or occasion for persons who took part in it or are connected with those who did so¹⁰, if the supply is to such a person¹¹;
- 781 (4) supply for the purpose only of the exhibition of any video work contained in it in premises other than a dwelling house licensed for or otherwise lawfully available for such exhibitions under specified provisions relating to film exhibitions¹²;
- 782 (5) supply with a view only to the use of the recording for or in connection with a programme service¹³;
- 783 (6) supply for the purpose only of submitting a video work contained in it for the issue of a classification certificate¹⁴ or otherwise only for purposes of arrangements made by the designated authority¹⁵;
- 784 (7) supply with a view only to use in training for or carrying on any medical or related occupation¹⁶ or for the purpose of services provided in pursuance of the National Health Service Act 2006 or the National Health Service (Wales) Act 2006¹⁷ or in training persons employed in the course of such services¹⁸;
- 785 (8) supply otherwise than for reward for the purpose only of supplying it to a person who previously made an exempted supply of it¹⁹; and
- 786 (9) for the purpose of proceedings for offences in relation to video recordings only to be supplied in licensed sex shops²⁰, where a classification certificate states that no recording containing a specified work is to be supplied other than in a licensed sex shop, supply with a view to eventual supply in licensed sex shops²¹ to a person who, in the course of a business, makes video works or supplies video recordings²².

1 As to the meaning of 'video recording' see PARA 276.

2 See the Video Recordings Act 1984 s 3(1). As to supply in a licensed sex shop see PARA 280 text and note 9.

3 As to the meaning of 'supply' see PARA 276 note 7.

4 Video Recordings Act 1984 s 3(2). 'Business', except in s 3(4) (see notes 5-8), includes any activity carried on by a club: s 22(1). Where on any premises facilities are provided in the course or furtherance of a business

for supplying video recordings, the supply by any person of a recording on those premises is to be treated as a supply in the course or furtherance of a business: s 3(3). 'Premises' includes any vehicle, vessel or stall: s 22(1).

5 The definition of 'business' in note 4 does not apply here: see the Video Recordings Act 1984 s 22(1).

6 As to the meaning of 'video work' see PARA 276 note 3.

7 Any supply is a supply to the public unless it is (1) a supply to a person who, in the course of a business, makes video works or supplies video recordings; (2) an exempted supply under one of the other exemptions set out in heads (1)-(9) in the text; or (3) a supply outside the United Kingdom: Video Recordings Act 1984 s 3(4).

8 Video Recordings Act 1984 s 3(4).

9 Thus the work must not, to any significant extent, depict anything falling within the Video Recordings Act 1984 s 2(2)(a), (b) or (c) (see PARA 277 at heads (1)-(3)) (s 3(5)(b)); and must not be designed to any significant extent to stimulate or encourage anything falling within s 2(2)(a) or, in the case of anything falling within s 2(2)(b), be designed to any extent to do so (s 3(5)(c)). The word 'likely' has been substituted for 'designed' in s 2(2) by the Criminal Justice and Public Order Act 1994 s 89 (see PARA 277), but there has been no corresponding substitution in s 3(5)(c) where the reference to 'designed' remains.

10 Video Recordings Act 1984 s 3(5)(a).

11 Video Recordings Act 1984 s 3(5).

12 Video Recordings Act 1984 s 3(6). The premises referred to are premises mentioned in s 3(7) (ie in England and Wales, premises which, by virtue of an authorisation within the meaning of the Licensing Act 2003 s 136 (see PARA 132), may be used for the exhibition of a film within the meaning of Sch 1 para 15 (see PARA 31 note 14): see the Video Recordings Act 1984 s 3(7)(za) (added by the Licensing Act 2003 Sch 6 para 89)). Supply for an exhibition of a film which in England and Wales would be a film exhibition to which the Cinemas Act 1985 s 6 applies (film exhibition to which public not admitted or are admitted without payment) is also exempt: s 3(6)(b) (amended by the Cinemas Act 1985 Sch 2 para 18). The Cinemas Act 1985 has ceased to have effect for most purposes in England and Wales (see the Licensing Act 2003 Sch 6 para 95); but the Cinemas Act 1986 s 6 (other than s 6(3)), and ss 5, 20, 21 so far as relating to s 6, continue to have effect for the purposes of (1) the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 3(2)(b) (definition of 'sex cinema': see PARA 301); and (2) the Video Recordings Act 1984 s 3(6)(b): Licensing Act 2003 Sch 8 para 33.

13 Video Recordings Act 1984 s 3(8) (amended by the Broadcasting Act 1990 Sch 20 para 39). The reference in head (5) in the text to a programme service is to a programme service within the meaning of the Broadcasting Act 1990: see s 201; and **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 328.

14 As to the meaning of 'classification certificate' see PARA 279 note 1.

15 Video Recordings Act 1984 s 3(9). As to the designated authority see PARA 279.

16 See the Video Recordings Act 1984 s 3(10)(a). For these purposes, an occupation is a medical or related occupation if, to carry on the occupation, a person is required to be registered under the Health Professions Order 2001, SI 2002/254, the Nursing and Midwifery Order 2001, SI 2002/253, the Medical Act 1983, the Osteopaths Act 1993 or the Chiropractors Act 1994: Video Recordings Act 1984 s 3(11) (amended by the Chiropractors Act 1994 s 39; and by SI 2002/253; SI 2002/254).

17 See the Video Recordings Act 1984 s 3(10)(b) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 83, 84).

18 See the Video Recordings Act 1984 s 3(10)(c).

19 Video Recordings Act 1984 s 3(12).

20 In proceedings under the Video Recordings Act 1984 s 12(1), (3): see PARA 287. As to the licensing of sex shops see the Local Government (Miscellaneous Provisions) Act 1982 Sch 3; and PARA 301 et seq.

21 In sex shops for which licences are in force under the Local Government (Miscellaneous Provisions) Act 1982 Sch 3: Video Recordings Act 1984 s 12(5), (6).

22 Video Recordings Act 1984 s 12(6).

UPDATE

276-291 Introduction ... Powers of entry, search, seizure and arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

278 Exempted supplies

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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279. The designated authority.

The issue of classification certificates¹ for video works² is a function vested in a person or persons³ designated for that purpose by the Secretary of State⁴, referred to as the 'designated authority'⁵. The British Board of Film Classification is the designated authority for these purposes⁶. The designated authority is responsible for making arrangements:

- 787 (1) for determining⁷ whether or not video works are suitable for classification certificates having special regard to the likelihood of the works being viewed in the home⁸;
- 788 (2) in the case of works determined to be so suitable, for assigning a unique title to each video work in respect of which a classification certificate is to be issued⁹, for making such other determinations¹⁰ as are required for the issue of such certificates¹¹ and for issuing such certificates¹²; and
- 789 (3) for the maintenance of records¹³.

1 'Classification certificate' means a certificate issued in respect of a video work in pursuance of arrangements made by the designated authority, and satisfying the requirements of the Video Recordings Act 1984 s 7(2) (see PARA 280): s 7(1). Where any alteration is made to a video work in respect of which a classification certificate has been issued, the certificate is not treated as issued in respect of the altered work: s 22(3). 'Alteration' for this purpose includes addition: s 22(3).

2 As to the meaning of 'video work' see PARA 276 note 3.

3 See the Video Recordings Act 1984 s 4(2); and note 4.

4 The power to designate any person includes power (1) to designate two or more persons jointly; and (2) to provide that any person holding an office or employment specified in the notice is to be treated as designated while holding that office or employment: Video Recordings Act 1984 s 4(2). The Secretary of State may at any time designate another person in place of any person designated, giving directions as to the transfer of records: s 4(4). As to the Secretary of State see PARA 2. Where the Secretary of State proposes to make any designation he must lay particulars of the proposal before both Houses of Parliament and may not make the proposed designation until after the end of 40 days of so doing (s 5(1)), no account being taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days (s 5(3) (b)). Where particulars of a proposal are laid before different Houses on different days, the later day is the one from which the 40 days are reckoned: s 5(3)(a). If within the 40 days either House resolves that he should not make the proposed designation he must not do so, but may make further proposals: s 5(2). Designation of the authority is by notice given by the Secretary of State published in the London, Edinburgh and Belfast Gazettes: s 4(7). As to the necessity for the Secretary of State to be satisfied as to arrangements for appeals against determination by the designation authority see PARA 281.

5 Video Recordings Act 1984 s 4(8). As soon as reasonably practicable to do so after 31 December, the designated authority must make a report to the Secretary of State on the carrying out in the past year of the arrangements referred to in heads (1)-(3) in the text, together with a statement of accounts, and on such other matters, if any, as the authority considers appropriate or the Secretary of State requires: s 6(1). The Secretary of State must lay a copy of the report before each House of Parliament: s 6(2).

6 See 555 HL Official Report (5th series), 14 June 1994, col 1590. As to the British Board of Film Classification see PARA 23.

7 Ie for the purposes of the Video Recordings Act 1984: see s 4(1)(a).

8 Video Recordings Act 1984 s 4(1)(a). As to suitability see PARA 280.

9 Video Recordings Act 1984 s 4(1)(b)(ia) (added by the Video Recordings Act 1993 s 1). A title assigned to a video work under this provision must consist of the title under which the video work was determined to be suitable for the issue of a classification certificate and a registration number (which may contain letters and other symbols as well as figures): Video Recordings Act 1984 s 4(1A) (as so added). The purpose of this provision is to simplify the process of giving evidence in prosecutions: 542 HL Official Report (5th series), 15 February 1993, col 913.

10 Such 'other determinations' would include the giving of the advice referred to in PARA 280 note 6; the making of any statement as to the work's suitability for viewing by, and the prohibition of supply of a recording of it to, persons under a specified age (see the Video Recordings Act 1984 s 7(2)(b); and PARA 280); and the prohibition of supply other than in a licensed sex shop (see s 7(2)(c); and PARA 280).

11 Video Recordings Act 1984 s 4(1)(b)(i).

12 Video Recordings Act 1984 s 4(1)(b)(ii).

13 Video Recordings Act 1984 s 4(1)(c), which refers to records of determinations of the authority, whether made in pursuance of arrangements made by the person for the time being designated or by any person previously designated under s 4. The records so maintained must include, in relation to each video work in respect of which a classification certificate has been issued, a video recording which contains the video work, and shows, or shows on its spool, case or other thing on or in which it is kept, the title assigned to the video work under s 4(1)(b)(ia) (see the text to note 9), and the determination or determinations made in respect of it: s 4(1B) (added by the Video Recordings Act 1993 s 1).

UPDATE

276-291 Introduction ... Powers of entry, search, seizure and arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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280. Classification of video works.

In respect of a video work¹ the designated authority² may issue a classification certificate³ which must contain the title assigned to the video work⁴ and one of the following statements⁵, namely:

- 790 (1) that the video work concerned is suitable for general viewing and unrestricted supply⁶; or
- 791 (2) that it is suitable for viewing only by persons who have attained a specified age (not being more than 18 years) and that no video recording⁷ containing the work may be supplied to any person who has not attained that age⁸; or
- 792 (3) the statement in head (2) above together with a statement that no video recording containing the work may be supplied other than in a licensed sex shop⁹.

In making any determination as to the suitability¹⁰ of a video work, the designated authority must have special regard (among the other relevant factors) to any harm that may be caused¹¹ to potential viewers¹² or, through their behaviour, to society by the manner in which the work deals with¹³:

- 793 (a) criminal behaviour¹⁴;
- 794 (b) illegal drugs¹⁵;
- 795 (c) violent behaviour or incidents¹⁶;
- 796 (d) horrific behaviour or incidents¹⁷; or
- 797 (e) human sexual activity¹⁸.

The Secretary of State¹⁹ may by order²⁰ make provision enabling the designated authority to review any determination made by it, before the authority was required to have special regard to the above criteria²¹, as to the suitability of a video work²². The order may in particular provide:

- 798 (i) for the authority's power of review to be exercisable in relation to such determinations as it thinks fit²³;
- 799 (ii) for the authority to determine, on any review, whether, if it were then determining the suitability of the video work to which the determination under review relates, it would issue a classification certificate, or would issue a different classification certificate²⁴;
- 800 (iii) for the cancellation of a classification certificate, where it determines that it would not issue a classification certificate²⁵;
- 801 (iv) for the cancellation of a classification certificate and issue of a new classification certificate, where it determines that it would issue a different classification certificate²⁶;
- 802 (v) for any such cancellation or issue not to take effect until the end of such period as may be determined in accordance with the order²⁷;

- 803 (vi) for such persons as may appear to the authority to fall within a specified category of person to be notified of any such cancellation or issue in such manner as may be specified²⁸;
- 804 (vii) for treating a classification certificate, in relation to any act or omission occurring after its cancellation, as if it had not been issued²⁹;
- 805 (viii) for specified provisions of the Video Recordings Act 1984 to apply to determinations made on a review subject to such modifications (if any) as may be specified³⁰;
- 806 (ix) for specified regulations made³¹ to apply to a video work in respect of which a new classification certificate has been issued subject to such modifications (if any) as may be specified³².

Provision has been made by order, in exercise of the Secretary of State's powers under the provisions described above³³.

1 As to the meaning of 'video work' see PARA 276 note 3.

2 As to the designated authority see PARA 279.

3 As to the meaning of 'classification certificate' see PARA 279 note 1. As to fees in connection with the issue of certificates see the Video Recordings Act 1984 s 4(5), (6); and PARA 282.

4 In accordance with the Video Recordings Act 1984 s 4(1)(b)(ia) (see PARA 279 text and note 9): see s 7(2) (amended by the Video Recordings Act 1993 s 1(3)).

5 See the Video Recordings Act 1984 s 7(1); and PARA 279.

6 Video Recordings Act 1984 s 7(2)(a). This statement may be made with or without any advice as to the desirability of parental guidance with regard to the viewing of the work by young children or as to the particular suitability of the work for viewing by children or young children: s 7(2)(a) (amended by the Criminal Justice and Public Order Act 1994 s 90(2)).

7 As to the meaning of 'video recording' see PARA 276.

8 Video Recordings Act 1984 s 7(2)(b).

9 Video Recordings Act 1984 s 7(2)(c). As to licensed sex shops see PARA 301 et seq.

10 'Suitability' means suitability for the issue of a classification certificate or suitability for the issue of a certificate of a particular description: Video Recordings Act 1984 ss 4A(2), 4B(6) (ss 4A, 4B added by the Criminal Justice and Public Order Act 1994 s 90(1)).

11 This includes prospective harm, not merely actual harm: see *R (on the application of British Board of Film Classification) v Video Appeals Committee* [2008] EWHC 203 (Admin), [2008] 1 WLR 1658, [2008] All ER (D) 173 (Jan). However, the weaker the evidence of harm in relation to its likelihood, number of potential victims and degree of injury, the less weight need be attached to it: *R v Video Appeals Committee of the British Board of Film Classification, ex p British Board of Film Classification* [2000] EMLR 850.

12 'Potential viewer' means any person (including a child or young person) who is likely to view the video work in question if a classification certificate or a classification certificate of a particular description were issued: Video Recordings Act 1984 s 4A(2) (as added: see note 10).

13 Video Recordings Act 1984 s 4A(1) (as added: see note 10).

14 Video Recordings Act 1984 s 4A(1)(a) (as added: see note 10).

15 Video Recordings Act 1984 s 4A(1)(b) (as added: see note 10).

16 Video Recordings Act 1984 s 4A(1)(c) (as added: see note 10). 'Violent behaviour' includes any act inflicting or likely to result in the infliction of injury: s 4A(2) (as so added).

17 Video Recordings Act 1984 s 4A(1)(d) (as added: see note 10).

18 Video Recordings Act 1984 s 4A(1)(e) (as added: see note 10). Any behaviour or activity referred to in heads (a)-(e) in the text is taken to include behaviour or activity likely to stimulate or encourage it: s 4A(2) (as so added). As to the meaning of 'human sexual activity' see also *Meechie v Multi-Media Marketing Ltd* (1995) 94 LGR 474, sub nom *Kent County Council v Multi Media Marketing (Canterbury) Ltd* (1995) Times, 9 May, DC, cited in PARA 277 note 7.

19 As to the Secretary of State see PARA 2.

20 The Secretary of State may not make such an order unless he is satisfied that adequate arrangements will be made for an appeal against determinations made by the designated authority on a review: Video Recordings Act 1984 s 4B(4) (as added: see note 10). As to the exercise of this power see the text and note 33.

21 Ie before the coming into force of the Video Recordings Act 1984 s 4A: see s 4B(1) (as added: see note 10).

22 Video Recordings Act 1984 s 4B(1) (as added: see note 10). See further note 33.

23 Video Recordings Act 1984 s 4B(2)(a) (as added: see note 10). See further note 33.

24 Video Recordings Act 1984 s 4B(2)(b) (as added: see note 10). See further note 33.

25 Video Recordings Act 1984 s 4B(2)(c) (as added: see note 10). See further note 33.

26 Video Recordings Act 1984 s 4B(2)(d) (as added: see note 10). See further note 33.

27 Video Recordings Act 1984 s 4B(2)(e) (as added: see note 10). See further note 33.

28 Video Recordings Act 1984 s 4B(2)(f) (as added: see note 10). See further note 33.

29 Video Recordings Act 1984 s 4B(2)(g) (as added: see note 10). See further note 33.

30 Video Recordings Act 1984 s 4B(2)(h) (as added: see note 10). See further note 33.

31 Ie under the Video Recordings Act 1984 s 8 (see PARA 283): see s 4B(2)(i) (as added: see note 10).

32 Video Recordings Act 1984 s 4B(2)(i) (as added: see note 10). See further note 33.

33 The designated authority may, if it thinks fit, review any determination it made before 3 November 1994 as to the suitability of a video work: Video Recordings (Review of Determinations) Order 1995, SI 1995/2551, art 3. 'The designated authority', in relation to any transaction, means the person or persons designated under the Video Recordings Act 1984 s 4 (see PARA 279) at the time of that transaction: Video Recordings (Review of Determinations) Order 1995, SI 1995/2551, art 2. 'A review' means a review under the 1995 Order of a determination as to the suitability of a video work: art 2. 'Suitability' means suitability for the issue of a classification certificate or suitability for the issue of a certificate of a particular description: art 2.

The designated authority must determine on a review whether, if it were then determining the suitability of the video work, it would issue a classification certificate, or issue a different classification certificate from that previously issued: art 4. If it determines that it would not issue a classification certificate and the video work in question is one in respect of which a classification certificate has previously been issued, it must cancel the classification certificate previously issued: art 5(1). The cancellation referred to takes effect after the expiry of two weeks from the date of the determination: art 5(2). If it determines that it would issue a different classification certificate, it must cancel the classification certificate previously issued and issue a new one: art 6(1). The cancellation and issue referred to take effect after the expiry of three months from the date of the determination: art 6(2). The three month period is suspended on the lodging of an appeal against the determination in accordance with arrangements made for such appeals and resumes on the determination of the appeal: art 6(3). A classification certificate which is cancelled under art 5(1) or art 6(1) is treated, in relation to any act or omission occurring after its cancellation takes effect, as if it had not been issued: art 7. Where the designated authority cancels a classification certificate under art 5(1) or art 6(1) or issues a new one under art 6(1), it must notify, in accordance with art 8(2), (3), persons appearing to it to fall into the following categories of person of that fact, of the date on which the cancellation or issue will take effect in accordance with art 5(2) or 6(2), and of any relevant suspension or resumption under art 6(3) (art 8(1)):

78 (1) persons owning the right to distribute in any part of the United Kingdom the video work in question (art 8(1)(a));

79 (2) bodies or organisations representing persons engaged in the distribution or supply of video recordings (art 8(1)(b));

80 (3) bodies or authorities having as a statutory function the enforcement of the Video Recordings Act 1984 in their respective areas (Video Recordings (Review of Determinations) Order 1995, SI 1995/2551, art 8(1)(c));

81 (4) persons engaged in the retail sale or rental of video recordings (art 8(1)(d)).

A notice under head (1), head (2) or head (3) above must be sent by first-class post to the intended recipient's last known address: art 8(2). A notice under head (4) above must be placed, at such a time as will allow it to be read at the earliest possible date following the designated authority's decision, in at least two publications which are widely read by persons engaged in the retail sale or rental of video recordings and which (between them) circulate throughout the United Kingdom: art 8(3). As to the meaning of 'United Kingdom' see PARA 16 note 8.

Subject to art 9(2), the provisions of the Video Recordings Act 1984 s 4 (see PARAS 279, 281-289) apply to a determination made on a review as they apply to a determination made otherwise than on a review: Video Recordings (Review of Determinations) Order 1995, SI 1995/2551, art 9(1). Where the video work in question is one in respect of which a classification certificate has previously been issued, no fee is recoverable by the designated authority in connection with a determination on a review or the issue of a classification certificate on a review: art 9(2). The regulations made under the Video Recordings Act 1984 s 8 (see PARA 283) apply to a video work in respect of which a classification certificate has been issued on a review as they apply to a video work in respect of which a classification certificate has otherwise been issued: Video Recordings (Review of Determinations) Order 1995, SI 1995/2551, art 10.

UPDATE

276-291 Introduction ... Powers of entry, search, seizure and arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(vi) Statutory Control of Video Works and Recordings/A. SCHEME OF CONTROL/281. Appeal from decision of designated authority.

281. Appeal from decision of designated authority.

The Secretary of State¹ must not make any designation² unless he is satisfied that adequate arrangements will be made for an appeal by any person against a determination that a video work³ submitted by him for the issue of a classification certificate:

- 807 (1) is not suitable for a classification certificate⁴ to be issued in respect of it; or
- 808 (2) is not suitable for viewing by persons under a particular age,

or against a determination that no video recording⁵ containing the work is to be supplied other than in a licensed sex shop⁶.

Appeals are heard by the Video Appeals Committee, which is independent of the designated authority (the British Board of Film Classification)⁷. The appeals procedure is set out in the Video Appeals Committee terms and conditions, accessible at the date at which this volume states the law on the British Board of Film Classification's website⁸.

1 As to the Secretary of State see PARA 2.

2 ie under the Video Recordings Act 1984 s 4: see PARA 279.

3 As to the meaning of 'video work' see PARA 276 note 3.

4 As to the meaning of 'classification certificate' see PARA 279 note 1.

5 As to the meaning of 'video recording' see PARA 276.

6 Video Recordings Act 1984 s 4(3). As to licensed sex shops see PARA 301.

7 As to the designated authority see PARA 279; and as to the British Board of Film Classification see PARA 23.

8 At the date at which this volume states the law, the British Board of Film Classification maintained several internet sites on the worldwide web; the Video Appeals Committee's terms and conditions were accessible at www.bbfc.org.uk.

UPDATE

276-291 Introduction ... Powers of entry, search, seizure and arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(vi) Statutory Control of Video Works and Recordings/A. SCHEME OF CONTROL/282. Fees.

282. Fees.

The Secretary of State¹ may approve² a tariff providing for different fees for different classes of video works³ and for different circumstances⁴. No fee is to be recoverable by the designated authority⁵ in connection with any determination by the authority⁶ or the issue of any classification certificate⁷ unless it is payable in accordance with such a tariff⁸.

The British Board of Film Classification⁹ publishes its tariff of fees on its website¹⁰.

1 As to the Secretary of State see PARA 2.

2 The Video Recordings Act 1984 contains no provision as to the manner in which the Secretary of State is to signify his approval, which, accordingly, does not appear to require Parliamentary sanction; cf the requirements as to designation and regulations in s 5 (see PARA 279), s 8(3) (see PARA 283).

3 As to the meaning of 'video work' see PARA 276 note 3.

4 Video Recordings Act 1984 s 4(6).

5 As to the designated authority see PARA 279.

6 Ie under the Video Recordings Act 1984 s 4(1)(a) or (b): see PARA 279.

7 As to the meaning of 'classification certificate' see PARA 279.

8 Video Recordings Act 1984 s 4(5).

9 Ie as the designated authority. As to the British Board of Film Classification see PARA 23.

10 At the date at which this volume states the law, the tariff of fees was accessible at www.bbfc.co.uk.

UPDATE

276-291 Introduction ... Powers of entry, search, seizure and arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(vi) Statutory Control of Video Works and Recordings/A. SCHEME OF CONTROL/283. Labelling of video works.

283. Labelling of video works.

In relation to video works¹ in respect of which classification certificates² have been issued, the Secretary of State³ may by regulations⁴ require specified indications of any of the contents of any classification certificate to be shown in a specified manner on any video recording⁵ containing the video work in respect of which the certificate was issued or any spool, case or other thing on or in which the video recording is kept⁶.

The Video Recordings (Labelling) Regulations 1985⁷, which have been made in the exercise of these powers, require the appropriate symbol⁸ and the unique title⁹ to be shown on the face of every disc¹⁰, every magnetic tape¹¹ which is not kept on a spool or every spool on which a magnetic tape is kept¹². If the size allows, they must also be shown on the spine of the case or cover¹³ and the appropriate symbol must be shown, together with the appropriate explanatory statement¹⁴, on the largest face or faces of the case or cover¹⁵. The appropriate symbol, unique title and appropriate explanatory statement described above must be shown by means of a label affixed to, or a marking on, the disc, magnetic tape, spool, spine, case or cover in which a video recording is kept which complies with the relevant¹⁶ regulations¹⁷.

1 As to the meaning of 'video work' see PARA 276 note 3.

2 As to the meaning of 'classification certificate' see PARA 279 note 1.

3 As to the Secretary of State see PARA 2.

4 The regulations may make different provision for different video works and for different circumstances: Video Recordings Act 1984 s 8(2).

5 As to the meaning of 'video recording' see PARA 276 note 3.

6 Video Recordings Act 1984 s 8(1).

7 I.e. the Video Recordings (Labelling) Regulations 1985, SI 1985/911, which came into operation on 1 September 1985: reg 1.

8 The 'appropriate symbol' is an indication of the classification: see the Video Recordings (Labelling) Regulations 1985, SI 1985/911, reg 2(3).

9 'Unique title' means the title assigned to a video work under the Video Recordings Act 1984 s 4(1)(b)(ia) (see PARA 280): Video Recordings (Labelling) Regulations 1985, SI 1985/911, reg 2(1) (definition added by SI 1995/2550).

10 'Disc' means a disc containing information by the use of which the whole or a part of a video work may be produced: Video Recordings (Labelling) Regulations 1985, SI 1985/911, reg 2(1).

11 'Magnetic tape' means magnetic tape containing information by the use of which the whole or a part of a video work may be produced: Video Recordings (Labelling) Regulations 1985, SI 1985/911, reg 2(1).

12 See the Video Recordings (Labelling) Regulations 1985, SI 1985/911, reg 4(1) (amended by SI 1995/2550).

13 See the Video Recordings (Labelling) Regulations 1985, SI 1985/911, reg 4(2), (3).

14 The 'appropriate explanatory statement' is the statement set out in the Video Recordings (Labelling) Regulations 1985, SI 1985/911, reg 2(2).

15 See the Video Recordings (Labelling) Regulations 1985, SI 1985/911, reg 4(5).

16 le which satisfies the requirements of the Video Recordings (Labelling) Regulations 1985, SI 1985/911, regs 6, 7, 8 and 9 as appropriate: reg 5.

17 Video Recordings (Labelling) Regulations 1985, SI 1985/911, reg 5 (amended by SI 1995/2550). The detailed requirements as to labelling vary according to whether a disc is single- or double-sided: see the Video Recordings (Labelling) Regulations 1985, SI 1985/911, regs 4A, 4B (added by SI 1998/852).

UPDATE

276-291 Introduction ... Powers of entry, search, seizure and arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

283 Labelling of video works

NOTE 6--See the Video Recordings (Labelling) Regulations 2010, SI 2010/115.

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B. OFFENCES AND PROCEEDINGS

284. Supply of unclassified work.

A person¹ who supplies² or offers to supply³ a video recording containing a video work⁴ in respect of which no classification certificate⁵ has been issued⁶ is guilty of an offence⁷ unless the supply is an exempted supply⁸ or would if it took place be such a supply⁹ or the video work is an exempted work¹⁰. It is a defence to a charge of committing any such offence to prove that the accused believed on reasonable grounds¹¹:

809 (1) that the video work (or each of the works to which the charge relates if the recording contained more than one) was either an exempted work or a work in respect of which a classification certificate had been issued¹²; or

810 (2) that the supply was an exempted supply¹³, or would be such a supply if it took place¹⁴.

Without prejudice to any defence specified in the Video Recordings Act 1984¹⁵ in relation to a particular offence, it is a defence to a charge of committing any offence under that Act to prove that the commission of the offence was due to the act or default of a person other than the accused, and that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by any person under his control¹⁶.

In the event of conviction the court may order any video recording¹⁷ produced to the court and relating to the offence to be forfeited¹⁸.

1 As to offences by bodies corporate see PARA 290.

2 As to the meaning of 'supply' see PARA 276 note 7.

3 As to possession for purposes of supply see PARA 285.

4 As to the meaning of 'video recording' and 'video work' see PARA 276.

5 As to the meaning of 'classification certificate' see PARA 279 note 1.

6 In any proceedings for an offence under the Video Recordings Act 1984, a certificate purporting to be signed by a person authorised by the Secretary of State stating relevant facts is admissible in evidence that, on a specified day, no classification certificate had been issued in respect of a specified work: s 19(1). As to the Secretary of State see PARA 2. The facts to be so stated are (1) that the person has examined the record maintained in pursuance of arrangements made by the designated authority (see PARA 279 at head (2)), and a video work (or part of a video work) contained in a video recording identified by the certificate of evidence (s 19(1)(a)); and (2) that the record shows that, on the date specified in that certificate, no classification certificate had been issued in respect of the work (s 19(1)(b)). Such a certificate may also state that the video work concerned differs in specified respects from another video work examined by the authorised person and similarly identified (s 19(2)(a)); and that the record shows that, on a date specified in the certificate, a classification certificate was issued in respect of that other work (s 19(2)(b)); and if it does so it is admissible as evidence of the fact that the work does so differ (s 19(2)). Further, in any such proceedings, such a certificate may state that the authorised person has examined the record and a video work (or part of a video work) contained in a video recording identified by the certificate (s 19(3)(a)); and that the record shows that, on the date specified in the certificate, a classification certificate was issued in respect of the work and that a

document identified by the certificate of evidence is a copy of that classification certificate (s 19(3)(b)); and if the certificate of evidence does so state it is admissible as evidence of the fact that, on that date, a classification certificate in terms of the document so identified was issued in respect of the work (s 19(3)).

In any proceedings in England and Wales or Northern Ireland for an offence under the Video Recordings Act 1984, a certificate purporting to be signed by a person authorised in that behalf by the Secretary of State and stating that he has examined the record maintained in pursuance of arrangements made by the designated authority, and that the record shows that, on the date specified in the certificate, no classification certificate had been issued in respect of a video work having a particular title, is admissible as evidence of the fact that, on that date, no classification certificate had been issued in respect of a work of that title: s 19(3A) (s 19(3A), (3B) added by the Video Recordings Act 1993 s 4). A certificate purporting to be so signed stating that the authorised person has examined the record maintained in pursuance of arrangements made by the designated authority, and that the record shows that, on the date specified in the certificate under the Video Recordings Act 1984 s 19(3B), a classification certificate was issued in respect of a video work having a particular title and that a document identified by the certificate under s 19(3B) is a copy of the classification certificate so issued, is admissible as evidence of the fact that, on that date, a classification certificate in terms of the document so identified was issued in respect of a work of that title: see s 19(3B) (as so added).

These provisions do not make a certificate admissible as evidence in proceedings for an offence unless a copy of the certificate has, not less than seven days before the hearing, been served on the person charged with the offence in one of the following ways: (a) by delivering it to him or to his solicitor; or (b) by addressing it to him and leaving it at his usual or last known place of abode or place of business or by addressing it to his solicitor and leaving it at his office; or (c) by sending it in a registered letter or by the recorded delivery service addressed to him at his usual or last known place of abode or place of business or addressed to his solicitor at his office, or (d) in the case of a body corporate, by delivering it to the secretary or clerk of the body at its registered or principal office or sending it in a registered letter or by the recorded delivery service addressed to the secretary or clerk of that body at that office: s 19(5). Any document or video recording identified in such a certificate of evidence is to be treated as if it had been produced as an exhibit and identified in court by the person signing the certificate: s 19(4).

7 Video Recordings Act 1984 s 9(1). A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, and on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding £20,000 or to both: s 9(3) (added by the Criminal Justice and Public Order Act 1994 s 88). As to proceedings generally see PARA 291.

8 As to exempted supplies see PARA 278.

9 Video Recordings Act 1984 s 9(1)(a).

10 Video Recordings Act 1984 s 9(1)(b). As to exempted works see PARA 277.

11 Video Recordings Act 1984 s 9(2).

12 Video Recordings Act 1984 s 9(2)(a).

13 Ie by virtue of the Video Recordings Act 1984 s 3(4) or (5): see PARA 278.

14 Video Recordings Act 1984 s 9(2)(b).

15 Ie under the Video Recordings Act 1984 ss 1-14: see PARAS 276 et seq, 285 et seq.

16 Video Recordings Act 1984 s 14A (added by the Video Recordings Act 1993 s 2). As to such defences see PARA 132 notes 12-13.

17 In the Video Recordings Act 1984 s 21, 'video recording' refers also to any spool, case or other thing on or in which the recording is kept: s 21(3).

18 Video Recordings Act 1984 s 21(1). However, the court must not make such an order without giving an opportunity to any person claiming to be the owner of the recording or otherwise interested in it to show cause why the order should not be made: s 21(2). The order does not take effect until the expiration of the ordinary time within which an appeal may be instituted or, where there is an appeal, until it is finally decided or abandoned: s 21(4). For this purpose an application for a case to be stated or for leave to appeal is treated as the institution of an appeal (s 21(4)(a)), and where a decision on appeal is subject to a further appeal the appeal is not finally decided until the expiration of the ordinary time within which a further appeal may be instituted or, where there is a further appeal, until that appeal is finally decided or abandoned (s 21(4)(b)). As to appeals generally see **MAGISTRATES**.

UPDATE

276-291 Introduction ... Powers of entry, search, seizure and arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

284-289 Supply of unclassified work ... Recording without classification or with false indication as to classification

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(vi) Statutory Control of Video Works and Recordings/B. OFFENCES AND PROCEEDINGS/285. Possession of unclassified work for the purposes of supply.

285. Possession of unclassified work for the purposes of supply.

Where a video recording contains a video work¹ in respect of which no classification certificate² has been issued³, a person⁴ who has the recording in his possession for the purpose of supplying⁵ it is guilty of an offence⁶ unless he has it in his possession for the purpose only of a supply which, if it took place, would be an exempted supply⁷ or the video work is an exempted work⁸. It is a defence to a charge of committing any such offence for the accused to prove:

- 811 (1) that he believed on reasonable grounds that the work (or each of the works to which the charge relates if the recording contained more than one) was either an exempted work or a work in respect of which a classification certificate had been issued⁹;
- 812 (2) that he had the recording in his possession for the purpose only of a supply which he believed on reasonable grounds would be an exempted supply¹⁰ if it took place¹¹; or
- 813 (3) that he did not intend to supply the recording until a classification certificate in respect of the video work concerned had been issued¹².

It is also a defence for the accused to prove that the commission of the offence was due to the act or default of another person and that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by any person under his control¹³.

1 As to the meaning of 'video recording' and 'video work' see PARA 276.

2 As to the meaning of 'classification certificate' see PARA 279 note 1.

3 As to evidence by certificate of facts relevant to such a charge see PARA 284 note 6.

4 As to offences by bodies corporate see PARA 290.

5 As to the meaning of 'supply' see PARA 276 note 7.

6 Video Recordings Act 1984 s 10(1). A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, and on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding £20,000, or to both: s 10(3) (added by the Criminal Justice and Public Order Act 1994 s 88). As to the forfeiture of video recordings seized see PARA 284 text and note 18; and as to proceedings generally see PARA 291.

7 Video Recordings Act 1984 s 10(1)(a). As to exempted supplies see PARA 278.

8 Video Recordings Act 1984 s 10(1)(b). As to exempted works see PARA 277.

9 Video Recordings Act 1984 s 10(2)(a).

10 Ie by virtue of the Video Recordings Act 1984 s 3(4) or (5): see PARA 278.

11 Video Recordings Act 1984 s 10(2)(b).

12 Video Recordings Act 1984 s 10(2)(c).

13 See the Video Recordings Act 1984 s 14A; and PARA 284. As to such defences see PARA 132 notes 12-13.

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276-291 Introduction ... Powers of entry, search, seizure and arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

284-289 Supply of unclassified work ... Recording without classification or with false indication as to classification

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(vi) Statutory Control of Video Works and Recordings/B. OFFENCES AND PROCEEDINGS/286. Supply to persons under age.

286. Supply to persons under age.

Where a classification certificate¹ issued in respect of a video work² states³ that no video recording⁴ containing that work is to be supplied⁵ to any person who has not attained the age specified in the certificate⁶, a person⁷ who supplies or offers to supply a video recording containing that work to a person who has not attained the age so specified is guilty of an offence⁸ unless the supply is an exempted supply⁹ or would if it took place be such a supply¹⁰. It is a defence to a charge of committing any such offence for the accused¹¹ to prove:

- 814 (1) that he neither knew nor had reasonable grounds to believe that the classification certificate contained the statement concerned¹²;
- 815 (2) that he neither knew nor had reasonable grounds to believe that the person concerned had not attained that age¹³; or
- 816 (3) that he believed on reasonable grounds that the supply was an exempted supply¹⁴, or would if it took place be such a supply¹⁵.

It is also a defence for the accused to prove that the commission of the offence was due to the act or default of another person and that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by any person under his control¹⁶.

1 As to the meaning of 'classification certificate' see PARA 279.

2 As to the meaning of 'video work' see PARA 276 note 3.

3 As to evidence by certificate of the fact of such a statement see PARA 284 note 6.

4 As to the meaning of 'video recording' see PARA 276 note 3.

5 As to the meaning of 'supply' see PARA 276 note 7.

6 This must be an age of not more than 18: see the Video Recordings Act 1984 s 7(2)(b); and PARA 280.

7 As to offences by bodies corporate see PARA 290.

8 A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or to both: Video Recordings Act 1984 s 11(3) (added by the Criminal Justice and Public Order Act 1994 s 88). As to the standard scale see PARA 17 note 21. As to the forfeiture of video recordings seized see PARA 284 text and note 18. As to proceedings generally see PARA 291. Evidence of under age sales obtained by test purchases by under age persons acting under the instructions of law enforcement officers is admissible to prove the offence and should not be excluded as unfairly obtained evidence under the Police and Criminal Evidence Act 1984 s 78 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1365): *Ealing London Borough v Woolworths plc* [1995] Crim LR 58, DC.

9 As to exempted supplies see PARA 278.

10 Video Recordings Act 1984 s 11(1).

11 Where the accused is a company, it is the knowledge or reasonable grounds for belief of the employee who supplies or offers to supply the video recording to an under aged person that is relevant for the purposes of

this defence and not that of the company acting through those who manage its affairs: *Tesco Stores Ltd v Brent London Borough Council* [1993] 2 All ER 718, [1993] 1 WLR 1037, DC.

12 Video Recordings Act 1984 s 11(2)(a).

13 Video Recordings Act 1984 s 11(2)(b).

14 Ie by virtue of the Video Recordings Act 1984 s 3(4) or (5): see PARA 278.

15 Video Recordings Act 1984 s 11(2)(c).

16 See the Video Recordings Act 1984 s 14A; and PARA 284. As to such defences see PARA 132 notes 12-13.

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276-291 Introduction ... Powers of entry, search, seizure and arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

284-289 Supply of unclassified work ... Recording without classification or with false indication as to classification

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(vi) Statutory Control of Video Works and Recordings/B. OFFENCES AND PROCEEDINGS/287. Supply otherwise than in licensed sex shops.

287. Supply otherwise than in licensed sex shops.

Where a classification certificate¹ issued in respect of a video work² states³ that no video recording⁴ containing that work is to be supplied⁵ other than in a licensed sex shop⁶, a person⁷ who at any place other than in a sex shop for which a licence is in force under the relevant enactment⁸ supplies a video recording containing the work⁹ or offers to do so is guilty of an offence¹⁰ unless the supply is an exempted supply¹¹ or would be such a supply if it took place¹². A person who has in his possession such a video recording for the purpose of supplying it at any place other than in such a sex shop is likewise guilty unless the supply is, or would be, an exempted supply¹³. It is a defence to a charge of committing any such offence for the accused to prove:

- 817 (1) that he neither knew nor had reasonable grounds to believe that the classification certificate contained the statement concerned¹⁴;
- 818 (2) that he believed on reasonable grounds that the place concerned was a sex shop for which a licence under the relevant enactment was in force¹⁵; or
- 819 (3) that he believed on reasonable grounds that the supply was an exempted supply¹⁶ or would be such a supply if it took place¹⁷.

It is also a defence for the accused to prove that the commission of the offence was due to the act or default of another person and that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by any person under his control¹⁸.

1 As to the meaning of 'classification certificate' see PARA 279 note 1.

2 As to the meaning of 'video work' see PARA 276 note 3.

3 As to evidence by certificate of the contents of the classification certificate see PARA 284 note 6.

4 As to the meaning of 'video recording' see PARA 276.

5 As to the meaning of 'supply' see PARA 276 note 7.

6 See PARA 280 text and note 9.

7 As to offences by bodies corporate see PARA 290.

8 'Relevant enactment' means the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 (see PARA 301 et seq); Video Recordings Act 1984 s 12(5). As to the meaning of 'sex shop' see PARA 301 (definition applied by s 12(5)).

9 As to whether a recording contains a work see PARA 276 note 3.

10 A person guilty of an offence under the Video Recordings Act 1984 s 12(1) or (3) is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or to both: s 12(4A) (added by the Criminal Justice and Public Order Act 1994 s 88(5), (7)). As to the standard scale see PARA 17 note 21. As to the forfeiture of video recordings seized see PARA 284 text and note 18; and as to proceedings generally see PARA 291.

- 11 As to the meaning of 'exempted supply' see PARA 278.
- 12 Video Recordings Act 1984 s 12(1). It is contrary to s 12(1) to supply a restricted video other than to a person physically in a licensed sex shop, for example by mail or telephone order: *Interfact Ltd v Liverpool City Council, Pabo v Liverpool City Council* [2005] EWHC 995 (Admin), [2005] 1 WLR 3118.
- 13 Video Recordings Act 1984 s 12(3).
- 14 Video Recordings Act 1984 s 12(2)(a), (4)(a).
- 15 Video Recordings Act 1984 s 12(2)(b), (4)(b).
- 16 Ie by virtue of the Video Recordings Act 1984 s 3(4) or s 12(6): see PARA 278.
- 17 Video Recordings Act 1984 s 12(2)(c), (4)(c).
- 18 See the Video Recordings Act 1984 s 14A; and PARA 284. As to such defences see PARA 132 notes 12-13.

UPDATE

276-291 Introduction ... Powers of entry, search, seizure and arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

284-289 Supply of unclassified work ... Recording without classification or with false indication as to classification

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(vi) Statutory Control of Video Works and Recordings/B. OFFENCES AND PROCEEDINGS/288. Breach of labelling etc requirements.

288. Breach of labelling etc requirements.

A person¹ who supplies² or offers to supply a video recording³ or any spool, case or other thing on or in which the recording is kept which does not satisfy any requirement imposed by statutory regulations⁴ is guilty of an offence⁵ unless the supply is an exempted supply⁶ or would be such a supply if it took place⁷. It is a defence to a charge of committing such an offence for the accused to prove:

- 820 (1) that he believed on reasonable grounds that the supply was an exempted supply⁸ or would be such a supply if it took place⁹; or
- 821 (2) that he neither knew nor had reasonable grounds to believe that the recording, spool, case or other thing did not satisfy the requirement¹⁰.

It is also a defence for the accused to prove that the commission of the offence was due to the act or default of another person and that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by any person under his control¹¹.

1 As to offences by bodies corporate see PARA 290.

2 As to the meaning of 'supply' see PARA 276 note 7.

3 As to the meaning of 'video recording' see PARA 276.

4 I.e regulations made under the Video Recordings Act 1984 s 8: see PARA 283.

5 A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Video Recordings Act 1984 s 13(3) (added by the Criminal Justice and Public Order Act 1994 Sch 10 para 52(2)). As to the standard scale see PARA 17 note 21. As to the forfeiture of video recordings seized see PARA 284 text and note 18; and as to proceedings generally see PARA 291.

6 As to the meaning of 'exempted supply' see PARA 278.

7 Video Recordings Act 1984 s 13(1).

8 I.e by virtue of the Video Recordings Act 1984 s 3(4) or (5): see PARA 278.

9 Video Recordings Act 1984 s 13(2)(a).

10 Video Recordings Act 1984 s 13(2)(b).

11 See the Video Recordings Act 1984 s 14A; and PARA 284. As to such defences see PARA 132 notes 12-13.

UPDATE

276-291 Introduction ... Powers of entry, search, seizure and arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

284-289 Supply of unclassified work ... Recording without classification or with false indication as to classification

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(vi) Statutory Control of Video Works and Recordings/B. OFFENCES AND PROCEEDINGS/289. Recording without classification or with false indication as to classification.

289. Recording without classification or with false indication as to classification.

A person¹ who supplies² or offers to supply a video recording containing a video work³ in respect of which no classification certificate⁴ has been issued is guilty of an offence⁵ if the recording or any spool, case or other thing on or in which it is kept contains any indication that a classification certificate has been issued in respect of the work unless the supply is an exempted supply⁶ or would be such a supply if it took place⁷. It is a defence to such a charge for the accused to prove:

- 822 (1) that he believed on reasonable grounds that such a certificate had been issued or that the supply was an exempted supply⁸ or would be such a supply if it took place⁹; or
- 823 (2) that he neither knew nor had reasonable grounds to believe that the recording, spool, case or other thing contained the indication concerned¹⁰.

It is also a defence for the accused to prove that the commission of the offence was due to the act or default of another person and that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by any person under his control¹¹.

A person who supplies or offers to supply such a recording containing a work in respect of which a certificate has been issued is guilty of an offence if the recording or any spool etc contains any indication that is false in a material particular of any statement contained in the certificate¹² unless the supply is an exempted supply or would be such a supply if it took place¹³. It is a defence to a charge of committing such an offence for the accused to prove:

- 824 (a) that he believed on reasonable grounds that the supply was an exempted supply¹⁴ or would be such a supply if it took place¹⁵;
- 825 (b) that he believed on reasonable grounds that the certificate contained the statement indicated¹⁶; or
- 826 (c) that he neither knew nor had reasonable grounds to believe that the recording, spool, case or other thing contained the indication¹⁷.

It is also a defence for the accused to prove that the commission of the offence was due to the act or default of another person and that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by any person under his control¹⁸.

1 As to offences by bodies corporate see PARA 290.
 2 As to the meaning of 'supply' see PARA 276 note 7.
 3 As to the meaning of 'video recording' and 'video work' see PARA 276.
 4 As to the meaning of 'classification certificate' see PARA 279 note 1.

5 A person guilty of an offence under the Video Recordings Act 1984 s 14(1) or (3) is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or to both: s 14(5) (added by the Criminal Justice and Public Order Act 1994 s 88(6), (7)). As to the standard scale see PARA 17 note 21. As to the forfeiture of video recordings seized see PARA 284 text and note 18; and as to proceedings generally see PARA 291.

6 As to the meaning of 'exempted supply' see PARA 278.

7 Video Recordings Act 1984 s 14(1).

8 le by virtue of the Video Recordings Act 1984 s 3(4) or (5): see PARA 278.

9 Video Recordings Act 1984 s 14(2)(a).

10 Video Recordings Act 1984 s 14(2)(b).

11 See the Video Recordings Act 1984 s 14A; and PARA 284. As to such defences see PARA 132 notes 12-13.

12 le any statement falling under the Video Recordings Act 1984 s 7(2), including any advice falling within s 7(2)(a) (see PARA 280): see s 14(3).

13 Video Recordings Act 1984 s 14(3).

14 See note 8.

15 Video Recordings Act 1984 s 14(4)(a)(i).

16 Video Recordings Act 1984 s 14(4)(a)(ii).

17 Video Recordings Act 1984 s 14(4)(b).

18 See note 11.

UPDATE

276-291 Introduction ... Powers of entry, search, seizure and arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

284-289 Supply of unclassified work ... Recording without classification or with false indication as to classification

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(vi) Statutory Control of Video Works and Recordings/B. OFFENCES AND PROCEEDINGS/290. Enforcement.

290. Enforcement.

The functions of a local weights and measures authority¹ include the enforcement in its area of the Video Recordings Act 1984². The functions of a local weights and measures authority also include the investigation³ and prosecution outside its area of offences under the Video Recordings Act 1984 suspected to be linked⁴ to its area as well as the investigation outside its area of offences suspected to have been committed within it⁵.

A justice of the peace for an area to which a specified provision in the Magistrates' Courts Act 1980⁶ applies may issue a summons or warrant under and in accordance with that provision as respects an offence under the Video Recordings Act 1984 committed or suspected of having been committed outside the area for which he acts if it appears to the justice that the offence is linked⁷ to the supply or possession of video recordings within the area for which he acts⁸.

No prosecution for an offence under the Video Recordings Act 1984 may be brought after the expiry of the period of three years beginning with the date of the commission of the offence or one year beginning with the date of its discovery by the prosecutor, whichever is earlier⁹.

Where any offence relating to video recordings¹⁰ committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly¹¹. Where the affairs of a body corporate are managed by its members, this provision applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director¹².

1 As to local weights and measures authorities see **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 20.

2 Video Recordings Act 1984 s 16A(1) (s 16A added by the Criminal Justice Act 1988 s 162). The following provisions of the Trade Descriptions Act 1968 apply in relation to the enforcement of the Video Recordings Act 1984 by such an authority as in relation to the enforcement of the 1968 Act: the Trade Descriptions Act 1968 s 27 (power to make test purchases); s 28 (power to enter premises and inspect and seize goods and documents); s 29 (obstruction of authorised officers); s 33 (compensation for loss etc of goods seized under s 28); Video Recordings Act 1984 s 16A(2) (as so added); and see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARAS 508-509, 511. Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the Trade Descriptions Act 1968 applies as if the provisions of the Video Recordings Act 1984 were contained in the Trade Descriptions Act 1968 and as if the functions of any person in relation to the enforcement of the Video Recordings Act 1984 were functions under the Trade Descriptions Act 1968: Video Recordings Act 1984 s 16A(5) (as so added).

3 'Investigation' includes the exercise of the powers conferred by the Trade Descriptions Act 1968 ss 27, 28 (see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARAS 508-509) as applied by the Video Recordings Act 1984 s 16A(2): s 16A(4A)(b) (s 16A(1A), (1B), (4A) added by the Criminal Justice and Public Order Act 1994 s 91(1), (2)). The Trade Descriptions Act 1968 ss 29, 33 (see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARAS 509, 511) apply accordingly: Video Recordings Act 1984 s 16A(4A) (as so added).

4 For the purposes of the Video Recordings Act 1984 s 16A(1A), (1B), (2), offences in another area are 'linked' to the area of an authority if: (1) the supply or possession of video recordings in contravention of the Video Recordings Act 1984 within its area is likely to be or to have been the result of the supply or possession of those recordings in the other area; or (2) the supply or possession of video recordings in contravention of the

Video Recordings Act 1984 in the other area is likely to be or to have been the result of the supply or possession of those recordings in its area: s 16A(4A) (as added: see note 3).

5 Video Recordings Act 1984 s 16A(1A) (as added: see note 3). This means that where offences are part of a chain of supply an authority can investigate the entire chain of supply even where activities take place outside its area. However, the functions available to an authority under s 16A(1A) are not exercisable in relation to any circumstances suspected to have arisen within the area of another local weights and measures authority without the consent of that authority: s 16(1B) (as so added).

6 le the Magistrates' Courts Act 1980 s 1: see **MAGISTRATES** vol 29(2) (Reissue) PARAS 522-523.

7 An offence is 'linked' to the supply or possession of video recordings within the area for which a justice acts if the supply or possession of video recordings within his area is likely to be or to have been the result of the offence, or the offence is likely to be or to have been the result of the supply or possession of video recordings in his area: Video Recordings Act 1984 s 16B(3) (s 16B added by the Criminal Justice and Public Order Act 1994 s 91(3)).

8 Video Recordings Act 1984 s 16B(1) (as added: see note 7). Where a person charged with an offence under the Video Recordings Act 1984 appears or is brought before a magistrates' court in answer to a summons issued by virtue of s 16B(1), or under a warrant issued under s 16B(1), the court has jurisdiction to try the offence: s 16B(2) (as so added).

9 Video Recordings Act 1984 s 15(1) (s 15 substituted by the Criminal Justice and Public Order Act 1994 Sch 10 para 52(1), (3)).

10 As to these offences see PARAS 284-289.

11 Video Recordings Act 1984 s 16(1).

12 Video Recordings Act 1984 s 16(2). As to the prosecution of corporations generally see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1161.

UPDATE

276-291 Introduction ... Powers of entry, search, seizure and arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(vi) Statutory Control of Video Works and Recordings/B. OFFENCES AND PROCEEDINGS/291. Powers of entry, search, seizure and arrest.

291. Powers of entry, search, seizure and arrest.

If a justice of the peace is satisfied by information on oath that there are reasonable grounds for suspecting that an offence relating to video recordings¹ has been or is being committed on any premises², and that evidence of this is on those premises³, he may issue a warrant⁴ under his hand authorising any constable⁵ to enter and search the premises⁶. A constable entering or searching any premises in pursuance of such a warrant may use reasonable force if necessary and may seize anything found there which he has reasonable grounds to believe may be required to be used in evidence in any proceedings for any such offence⁷.

Where:

- 827 (1) a person who is lawfully on any premises finds anything on those premises that he has reasonable grounds for believing may be or may contain something for which he is authorised to search on those premises;
- 828 (2) the above power of seizure⁸ would entitle him, if he found it, to seize whatever it is that he has grounds for believing that thing to be or to contain; and
- 829 (3) in all the circumstances, it is not reasonably practicable for it to be determined on those premises whether what he has found is something that he is entitled to seize, or the extent to which what he has found contains something that he is entitled to seize⁹,

that person's powers of seizure include power to seize so much of what he has found as it is necessary to remove from the premises to enable that to be determined¹⁰. Excluded or special procedure material¹¹ must, however, be returned as soon as reasonably practicable after the seizure, unless its retention is otherwise authorised by statute¹², as must items subject to legal privilege¹³.

1 As to these offences see PARAS 284-289.

2 Video Recordings Act 1984 s 17(1)(a). As to the meaning of 'premises' see PARA 278 note 4.

3 Video Recordings Act 1984 s 17(1)(b).

4 As to search warrants generally see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 871 et seq.

5 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

6 Video Recordings Act 1984 s 17(1) (amended by the Criminal Justice and Public Order Act 1994 Sch 9 para 23(b), Sch 11). Such a warrant cannot, however, authorise searches for certain types of material: see the Police and Criminal Evidence Act 1984 s 9(2); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 874.

7 Video Recordings Act 1984 s 17(2). As to the forfeiture of video recordings so seized see PARA 284 text and note 18.

8 le the power conferred by the Video Recordings Act 1984 s 17(2): see the text and note 7.

9 The factors to be taken into account in considering, for these purposes, whether or not it is reasonably practicable on particular premises for something to be determined, or for something to be separated from something else, are confined to the following: (1) how long it would take to carry out the determination or separation on those premises; (2) the number of persons that would be required to carry out that determination or separation on those premises within a reasonable period; (3) whether the determination or separation would (or would if carried out on those premises) involve damage to property; (4) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and (5) in the case of separation, whether the separation (a) would be likely; or (b) if carried out by the only means that are reasonably practicable on those premises, would be likely, to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used: Criminal Justice and Police Act 2001 s 50(3).

10 Criminal Justice and Police Act 2001 s 50(1), (5), Sch 1 para 34. Where (1) a person who is lawfully on any premises finds anything on those premises ('the seizable property') which he would be entitled to seize but for its being comprised in something else that he has otherwise no power to seize; (2) the power under which that person would have power to seize the seizable property is a power to which s 50 applies; and (3) in all the circumstances it is not reasonably practicable for the seizable property to be separated, on those premises, from that in which it is comprised, that person's powers of seizure include power under s 50 to seize both the seizable property and that from which it is not reasonably practicable to separate it: s 50(2). As to separation see note 9. The Police and Criminal Evidence Act 1984 s 19(6) (powers of seizure not to include power to seize anything that a person has reasonable grounds for believing is legally privileged: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue PARA 886) does not apply to the power of seizure conferred by the Criminal Justice and Police Act 2001 s 50(2): s 50(4).

11 As to excluded and special procedure material see the Police and Criminal Evidence Act 1984 ss 11, 14 (applied by the Criminal Justice and Police Act 2001 s 66(6)); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 875-876.

12 See the Criminal Justice and Police Act 2001 s 55, Sch 1 para 103 (s 55 amended by the Proceeds of Crime Act 2002 Sch 11 paras 1, 40(1), (2), Sch 12).

13 See the Criminal Justice and Police Act 2001 s 54. As to the meaning of 'legal privilege' for these purposes see the Police and Criminal Evidence Act 1984 s 10 (applied by the Criminal Justice and Police Act 2001 s 65(1)); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 873.

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276-291 Introduction ... Powers of entry, search, seizure and arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(vi) Statutory Control of Video Works and Recordings/B. OFFENCES AND PROCEEDINGS/292. Distributing, showing or playing a recording which incites to racial hatred.

292. Distributing, showing or playing a recording which incites to racial hatred.

A person¹ who distributes, or shows or plays², a recording³ of visual images or sounds which are threatening, abusive or insulting⁴ is guilty of an offence if he intends thereby to stir up racial hatred⁵, or if, having regard to all the circumstances, racial hatred is likely to be stirred up thereby⁶. In proceedings for such an offence it is, however, a defence for an accused who is not shown to have intended to stir up racial hatred to prove that he was not aware of the content of the recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting⁷.

This offence is discussed in more detail elsewhere in this work⁸.

1 As to offences by corporations see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 562 note 1.

2 For these purposes, references to the distribution, showing or playing of a recording are to its distribution, showing or playing to the public or a section of the public: see the Public Order Act 1986 ss 21(2), 29. As to the meaning of 'section of the public' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 563 note 2. Section 21 does not, however, apply to the showing or playing of a recording solely for the purposes of enabling the recording to be included in a programme service (within the meaning of the Broadcasting Act 1990: see s 201; and **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 328): Public Order Act 1986 ss 21(4), 29 (amended by the Broadcasting Act 1990 ss 164(2)(c), (5), 203(3), Sch 21).

3 For these purposes, 'recording' means any record from which visual images or sounds may, by any means, be reproduced: Public Order Act 1986 ss 21(2), 29.

4 As to the meaning of 'threatening, abusive or insulting' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 558 note 1.

5 Public Order Act 1986 s 21(1)(a). As to the meaning of 'racial hatred' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 562 note 5.

6 Public Order Act 1986 s 21(1)(b). No proceedings for such an offence may be instituted except by or with the consent of the Attorney General: s 27(1).

A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine, or to both, or on summary conviction to a term not exceeding (1) at the date at which this volume states the law, six months; or (2) as from a day to be appointed under the Criminal Justice Act 2003 s 336(3) for the coming into force of s 282 (not yet in force), 12 months, or (in either case) to a fine not exceeding the statutory maximum, or to both: see the Public Order Act 1986 s 27(3) (amended by the Anti-terrorism, Crime and Security Act 2001 s 40). As to the statutory maximum see PARA 247 note 13.

7 Public Order Act 1986 s 21(3).

8 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 565.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(2) THEATRES, CINEMAS, VIDEO RECORDINGS AND SOUND RECORDINGS/(vi) Statutory Control of Video Works and Recordings/B. OFFENCES AND PROCEEDINGS/293. Distributing, showing or playing a recording which incites to religious hatred or hatred on the grounds of sexual orientation.

293. Distributing, showing or playing a recording which incites to religious hatred or hatred on the grounds of sexual orientation.

A person¹ who distributes, or shows or plays², a recording³ of visual images or sounds which are threatening⁴ is guilty of an offence if he intends thereby to stir up religious hatred⁵. This offence is discussed in more detail elsewhere in this work⁶.

As from a day to be appointed⁷, a person who distributes, or shows or plays, a recording of visual images or sounds which are threatening will also be guilty of an offence if he intends thereby to stir up hatred on the grounds of sexual orientation⁸.

1 As to offences by corporations see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 569 note 1.

2 For these purposes, references to the distribution, showing or playing of a recording are references to its distribution, showing or playing to the public or a section of the public: see the Public Order Act 1986 ss 29E(2), 29N (ss 29E, 29L, 29N added by the Racial and Religious Hatred Act 2006 Schedule). As to the meaning of 'section of the public' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 563 note 2. Section s 29E does not, however, apply to the showing or playing of a recording solely for the purposes of enabling the recording to be included in a programme service (within the meaning of the Broadcasting Act 1990: see s 201; and **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 328): Public Order Act 1986 ss 29E(3), 29N (as so added).

3 For these purposes, 'recording' means any record from which visual images or sounds may, by any means, be reproduced: Public Order Act 1986 ss 29E(2), 29N (both as added: see note 2).

4 As to the meaning of 'threatening' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 558 note 1.

5 Public Order Act 1986 s 29E(1) (as added: see note 2). As to the meaning of 'religious hatred' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 569 note 5. No proceedings for such an offence may be instituted except by or with the consent of the Attorney General: s 29L(1) (as so added).

A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine, or to both, or on summary conviction to a term not exceeding (1) at the date at which this volume states the law, six months; or (2) as from a day to be appointed under the Criminal Justice Act 2003 s 336(3) for the coming into force of s 282 (not yet in force), 12 months, or (in either case) to a fine not exceeding the statutory maximum, or to both: see the Public Order Act 1986 s 29L(3) (as so added). As to the statutory maximum see PARA 247 note 13.

6 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 572.

7 As from a day to be appointed under the Criminal Justice and Immigration Act 2008 s 153(7). At the date at which this volume states the law, no such day had been appointed.

8 Public Order Act 1986 s 29E(1) (as added (see note 2); prospectively amended by the Criminal Justice and Immigration Act 2008 Sch 16 paras 1, 9, as from a day to be appointed (see note 7); at the date at which this volume states the law, that amendment was not in force). As to the meaning of 'hatred on the grounds of sexual orientation' see PARA 248 note 8.

UPDATE

293 Distributing, showing or playing a recording which incites to religious hatred or hatred on the grounds of sexual orientation

NOTE 5--Public Order Act 1986 s 29L(1), (3) amended, s 29L(4) added: Criminal Justice and Immigration Act 2008 Sch 16 para 16, Sch 28 Pt 5.

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294. Possession of racially inflammatory or otherwise inflammatory recordings.

A person¹ who has in his possession a recording² of visual images or sounds which are threatening, abusive or insulting³, with a view to its being distributed⁴ or included in a programme service⁵, whether by himself or another⁶, is guilty of an offence if he intends racial hatred⁷ to be stirred up thereby or if, having regard to all the circumstances, racial hatred is likely to be stirred up thereby⁸. In proceedings for such an offence it is a defence for a defendant who is not shown to have intended to stir up racial hatred to prove that he was not aware of the content of the written material or recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting⁹.

A person¹⁰ who has in his possession a recording of visual images or sounds which are threatening¹¹, with a view to its being distributed or included in a programme service¹², whether by himself or another¹³, is guilty of an offence if he intends religious hatred¹⁴ (or, as from a day to be appointed¹⁵, hatred on the grounds of sexual orientation¹⁶) to be stirred up thereby¹⁷.

These offences are discussed in more detail elsewhere in this work¹⁸.

1 As to offences by corporations see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 562 note 1.

2 As to the meaning of 'recording' for these purposes see PARA 292 note 3.

3 As to the meaning of 'threatening, abusive or insulting' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 558 note 1.

4 As to the meaning of 'distributed' for these purposes see PARA 292 note 2.

5 I.e. a programme service within the meaning of the Broadcasting Act 1990 (see s 201; and **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 328): see the Public Order Act 1986 s 29 (amended by the Broadcasting Act 1990 ss 164(5), 203(3), Sch 21).

6 See the Public Order Act 1986 s 23(1)(b) (s 23(1)(b), (2) amended by the Broadcasting Act 1990 s 164(4)).

7 As to the meaning of 'racial hatred' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 562 note 5.

8 Public Order Act 1986 s 23(1). For this purpose regard must be had to such display, publication, distribution, showing, playing, or inclusion in a programme service as he has, or it may reasonably be inferred that he has, in view: s 23(2) (as amended: see note 6). No proceedings for such an offence may be instituted except by or with the consent of the Attorney General: s 27(1).

A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine, or to both, or on summary conviction to a term not exceeding (1) at the date at which this volume states the law, six months; or (2) as from a day to be appointed under the Criminal Justice Act 2003 s 336(3) for the coming into force of s 282 (not yet in force), 12 months, or (in either case) to a fine not exceeding the statutory maximum, or to both: see the Public Order Act 1986 s 27(3) (amended by the Anti-terrorism, Crime and Security Act 2001 s 40). As to the statutory maximum see PARA 247 note 13.

9 Public Order Act 1986 s 23(3).

10 As to offences by corporations see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 569 note 1.

11 See note 3.

12 le a programme service within the meaning of the Broadcasting Act 1990 (see s 201; and **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 328): see the Public Order Act 1986 s 29N (ss 29G, 29L, 29N added by the Racial and Religious Hatred Act 2006 Schedule).

13 See the Public Order Act 1986 s 29G(1)(b) (as added: see note 12).

14 As to the meaning of 'religious hatred' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 569 note 5.

15 le as from a day to be appointed under the Criminal Justice and Immigration Act 2008 s 153(7). At the date at which this volume states the law, no such day had been appointed.

16 As to the meaning of 'hatred on the grounds of sexual orientation' see PARA 248 note 8.

17 Public Order Act 1986 s 29G(1) (as added (see note 12), prospectively amended by the Criminal Justice and Immigration Act 2008 Sch 16 paras 1, 11, as from a day to be appointed (see note 17); at the date at which this volume states the law, that amendment was not in force and the text was to be read without the reference to stirring up hatred on the grounds of sexual orientation). For this purpose regard must be had to such display, publication, distribution, showing, playing, or inclusion in a programme service as he has, or it may be reasonably be inferred that he has, in view: Public Order Act 1986 s 29G(2) (as so added). No proceedings for such an offence may be instituted except by or with the consent of the Attorney General: s 29L(1) (as so added).

A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine, or to both, or on summary conviction to a term not exceeding (1) at the date at which this volume states the law, six months; or (2) as from a day to be appointed under the Criminal Justice Act 2003 s 336(3) for the coming into force of s 282 (not yet in force), 12 months, or (in either case) to a fine not exceeding the statutory maximum, or to both: see the Public Order Act 1986 s 29L(3) (as so added).

18 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 567, 574.

UPDATE

294 Possession of racially inflammatory or otherwise inflammatory recordings

NOTE 17--Public Order Act 1986 s 29L(1), (3) amended, s 29L(4) added: Criminal Justice and Immigration Act 2008 Sch 16 para 16, Sch 28 Pt 5.

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(vii) Corporation Tax Treatment of Sound Recordings

295. Revenue nature of expenditure on sound recordings.

If a company carrying on a trade incurs expenditure on the production or acquisition of the original master version¹ of a sound recording (other than a film soundtrack)², the expenditure is treated for corporation tax purposes as expenditure of a revenue nature³. If expenditure is so treated as revenue in nature, sums received by the company from the disposal of the original master version of the sound recording⁴ are treated for corporation tax purposes as receipts of a revenue nature, and are brought into account in calculating the profits of the relevant period⁵ in which they are received⁶.

A company's gains in respect of intangible fixed assets are, in general, chargeable to corporation tax as income and its losses in respect of intangible fixed assets are brought into account for the purposes of corporation tax in accordance with the relevant provisions⁷ of the Finance Act 2002⁸. Those provisions do not, however, apply, except as regards royalties, to an intangible fixed asset held by a company to the extent that it represents expenditure by the company on the production or acquisition of the master version of a sound recording other than a film soundtrack⁹.

1 For the purposes of the Finance Act 2006 ss 48, 49 (see the text and notes 2-6; and PARA 296), 'original master version' means the master tape or master audio disc of the recording; and references to the original master version of a sound recording include any rights in the original master version that are held or acquired with it: s 50(b), (c).

2 For the purposes of the Finance Act 2006 ss 48, 49, 'sound recording' does not include a film soundtrack: s 50(a).

3 Finance Act 2006 s 48(1).

4 For this purpose, sums received from the disposal of the original master version include (1) sums received from the disposal of any interest or right in or over the original master version (including an interest or right created by the disposal); and (2) insurance, compensation or similar money derived from the original master version: Finance Act 2006 s 48(3).

5 For the purposes of the Finance Act 2006 ss 48, 49, 'relevant period' means (1) a period for which accounts of the trade are made up; or (2) if no accounts of the trade are made up for a period, an accounting period of the company: s 50(d).

6 Finance Act 2006 s 48(2).

7 Ie in accordance with the Finance Act 2002 Sch 29: see **INCOME TAXATION**.

8 See the Finance Act 2002 Sch 29 para 1(1), (2). As to the meanings of 'intangible asset' and 'intangible fixed asset' for these purposes see PARA 263 note 20.

9 Finance Act 2002 Sch 29 para 80B(1), (2)(a) (added by the Finance Act 2006 s 51(1)). For these purposes, 'master version' means master tape or master audio disc of the recording; and references to the master version include any rights in the master version that are held or acquired with it: Finance Act 2002 Sch 29 para 80B(2) (b), (c) (as so added).

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296. Allocation of expenditure.

In calculating for the purposes of corporation tax the profits or losses of a company from a trade where the trade consists of or includes the exploitation of original master versions¹ of sound recordings (other than film soundtracks)², and the original master versions do not constitute trading stock of the trade³, expenditure that is incurred on the production or acquisition of the original master version of a sound recording, and is expenditure of a revenue nature⁴, must be allocated to relevant periods⁵ in accordance with these provisions⁶. The company must allocate to a relevant period so much of the expenditure as is just and reasonable having regard to:

- 830 (1) the amount of the expenditure that remains unallocated at the beginning of the period;
- 831 (2) the proportion that the estimated value of the original master version of the sound recording that is realised in that period, whether by way of income or otherwise, bears to the aggregate of the value so realised and the estimated remaining value of the original master version at the end of the period; and
- 832 (3) the need to bring the whole of the expenditure into account over the time during which the value of the original master version is expected to be realised⁷.

The company may also allocate to a relevant period a further amount, so long as the total amount allocated does not exceed the value of the original master version of the sound recording realised in that period, whether by way of income or otherwise⁸.

1 As to the meaning of 'original master version' see PARA 295 note 1.

2 See PARA 295 note 2.

3 I.e. as defined by the Income and Corporation Taxes Act 1988 s 100(2); see **INCOME TAXATION** vol 23(1) (Reissue) PARA 169.

4 I.e. whether as a result of the Finance Act 2006 s 48 (see PARA 295) or otherwise: s 49(2)(b).

5 As to the meaning of 'relevant period' see PARA 295 note 5.

6 Finance Act 2006 s 49(1), (2).

7 Finance Act 2006 s 49(3).

8 Finance Act 2006 s 49(4).

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(3) RAVES

297. Powers to remove persons attending or preparing for, or to stop persons from proceeding to, a rave.

The following provisions apply to a gathering¹ on land in the open air² of 20 or more persons (whether or not trespassers³) at which amplified music⁴ is played during the night (with or without intermissions) and is such as, by reason of its loudness and duration and the time at which it is played, is likely to cause serious distress to the inhabitants of the locality⁵. They also apply to a gathering if it is a gathering on land of 20 or more persons who are trespassing on the land, and it would be a gathering of a kind mentioned above if it took place on land in the open air⁶.

If, as respects any land, a police officer of at least the rank of superintendent reasonably believes that:

- 833 (1) two or more persons are making preparations for the holding there of a gathering to which these provisions apply;
- 834 (2) ten or more persons are waiting for such a gathering to begin there; or
- 835 (3) ten or more persons are attending such a gathering which is in progress,

he may give a direction⁷ that those persons and any other persons who come to prepare or wait for or to attend the gathering are to leave the land and remove any vehicles⁸ or other property which they have with them on the land⁹. If a person, knowing that a direction has been given which applies to him, fails to leave the land as soon as reasonably practicable or, having left, again enters the land within the period of seven days beginning with the day on which the direction was given, he commits an offence¹⁰. In proceedings for such an offence it is, however, a defence for the accused to show that he had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land¹¹.

A person also commits an offence if he knows that such a direction has been given which applies to him, and he makes preparations for or attends a gathering to which these provisions apply within the period of 24 hours starting when the direction was given¹².

If a constable in uniform reasonably believes that a person is on his way to such a gathering as is mentioned above in relation to which a direction¹³ is in force, he may stop that person, and direct him not to proceed in the direction of the gathering¹⁴. If a person, knowing that such a direction has been given to him, fails to comply with that direction, he commits an offence¹⁵.

If a police officer of at least the rank of superintendent reasonably believes that circumstances exist in relation to any land which would justify the giving of a direction¹⁶ in relation to a gathering he may authorise any constable to enter the land in order to ascertain whether such circumstances exist¹⁷ and to exercise any power conferred¹⁸ on a constable¹⁹. A constable who is so authorised to enter land for any purpose may enter the land without a warrant²⁰.

If a direction has been given for the removal of persons attending or preparing for a rave²¹ and a constable reasonably suspects that any person to whom the direction applies has, without reasonable excuse:

- 836 (a) failed to remove any vehicle or sound equipment²² on the land which appears to the constable to belong to him or to be in his possession or under his control; or
 837 (b) entered the land as a trespasser with a vehicle or sound equipment within the period of seven days beginning with the day on which the direction was given,

the constable may seize and remove that vehicle or sound equipment²³.

Any vehicles which have been so seized and removed may be retained in accordance with regulations made by the Secretary of State²⁴; and any sound equipment which has been so seized and removed may be retained until the conclusion of proceedings²⁵ against the person from whom it was seized for an offence²⁶.

1 These provisions do not apply to a gathering in relation to a licensable activity within the Licensing Act 2003 s 1(1)(c) (provision of certain forms of entertainment: see PARA 28) carried on under and in accordance with an authorisation within the meaning of s 136 (see PARA 132): Criminal Justice and Public Order Act 1994 s 63(9)(a) (substituted by the Licensing Act 2003 Sch 6 para 111).

2 'Land in the open air' includes a place partly open to the air: Criminal Justice and Public Order Act 1994 s 63(10).

3 'Trespass' means trespass as against the occupier of the land, and 'trespassing' and 'trespasser' are to be construed accordingly: Criminal Justice and Public Order Act 1994 ss 61(9), 63(10).

4 'Music' includes sounds wholly or predominantly characterised by the emission of a succession of repetitive beats: Criminal Justice and Public Order Act 1994 s 63(1)(b).

5 Criminal Justice and Public Order Act 1994 s 63(1) (amended by the Anti-social Behaviour Act 2003 s 58(1), (2)). For this purpose, such a gathering continues during intermissions in the music and, where the gathering extends over several days, throughout the period during which amplified music is played at night (with or without intermissions): Criminal Justice and Public Order Act 1994 s 63(1)(a).

6 Criminal Justice and Public Order Act 1994 s 63(1A) (added by the Anti-social Behaviour Act 2003 s 58(1), (3)).

7 Such a direction does not apply to an exempt person: Anti-social Behaviour Act 2003 s 63(5). 'Exempt person', in relation to land (or any gathering on land), means the occupier, any member of his family and any employee or agent of his and any person whose home is situated on the land: ss 63(10), 64(6). 'Occupier' means, in England and Wales, the person entitled to possession of the land by virtue of an estate or interest held by him: ss 61(9), 63(10).

8 'Vehicle' includes: (1) any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle; and (2) a caravan as defined in the Caravan Sites and Control of Development Act 1960 s 29(1) (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1033): Criminal Justice and Public Order Act 1994 ss 61(9), 63(10), 64(6).

9 Criminal Justice and Public Order Act 1994 s 63(2) (amended by the Anti-social Behaviour Act 2003 ss 58(1), (4), 92, Sch 3). Such a direction, if not communicated to such persons by the police officer giving the direction, may be communicated to them by any constable at the scene: Criminal Justice and Public Order Act 1994 s 63(3). Persons are to be treated as having had a direction communicated to them if reasonable steps have been taken to bring it to their attention: s 63(4). As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

10 Criminal Justice and Public Order Act 1994 s 63(6). A person who commits such an offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale, or to both: s 63(6) (prospectively amended by the Criminal Justice Act 2003 Sch 26 para 45(1), (6), as from a day to be appointed under s 336(3); at the date at which this volume states the law, no such day had been appointed and the maximum term of imprisonment was three months). As to the standard scale see PARA 17 note 21.

11 Criminal Justice and Public Order Act 1994 s 63(7) (amended by the Anti-social Behaviour Act 2003 s 58(1), (5)).

12 Criminal Justice and Public Order Act 1994 s 63(7A) (s 63(7A), (7B) added by the Anti-social Behaviour Act 2003 s 58(1), (6)). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale, or to both: Criminal Justice and Public Order Act 1994 s 63(7B) (as so added; prospectively amended by the Criminal Justice Act 2003 Sch 26 para 45(1), (6), as from a day to be appointed under s 336(3); at the date at which this volume states the law, no such day had been appointed and the maximum term of imprisonment was three months).

13 Ie a direction under the Criminal Justice and Public Order Act 1994 s 63(2): see the text and note 9.

14 Criminal Justice and Public Order Act 1994 s 65(1). No such direction may be given under s 65(1) to an exempt person: s 65(3), (6). This power may only be exercised at a place within five miles of the boundary of the site of the gathering: s 65(2).

15 Criminal Justice and Public Order Act 1994 s 65(4). A person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 65(4).

16 Ie under the Criminal Justice and Public Order Act 1994 s 63: see s 64(1).

17 Criminal Justice and Public Order Act 1994 s 64(1), (2)(a).

18 Ie by the Criminal Justice and Public Order Act 1994 s 63 (see the text and notes 1-12) or s 64(4) (see the text and notes 21-23).

19 Criminal Justice and Public Order Act 1994 s 64(2)(b).

20 Criminal Justice and Public Order Act 1994 s 64(3).

21 Ie given under the Criminal Justice and Public Order Act 1994 s 63.

22 'Sound equipment' means equipment designed or adapted for amplifying music and any equipment suitable for use in connection with such equipment, and 'music' has the same meaning as in the Criminal Justice and Public Order Act 1994 s 63 (see note 4): s 64(6).

23 Criminal Justice and Public Order Act 1994 s 64(4). This does not authorise the seizure of any vehicle or sound equipment of an exempt person: s 64(5).

24 Criminal Justice and Public Order Act 1994 s 67(1). As to the Secretary of State see PARA 2. The Secretary of State may make regulations: (1) regulating the retention and safe keeping and the disposal and the destruction in prescribed circumstances of vehicles; and (2) prescribing charges in respect of the removal, retention, disposal and destruction of vehicles: s 67(3). Such regulations may make different provision for different classes of vehicles or for different circumstances: s 67(5). See the Police (Retention and Disposal of Vehicles) Regulations 1995, SI 1995/723; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 590.

Any authority is entitled to recover from a person from whom a vehicle has been seized such charges, which are recoverable as a simple contract debt, as may be prescribed in respect of the removal, retention, disposal and destruction of the vehicle by the authority: Criminal Justice and Public Order Act 1994 s 67(4), (6). Any authority having custody of vehicles under regulations under s 67(3) is entitled to retain custody until any charges under s 67(4) are paid: s 67(7).

25 'Conclusion of proceedings' against a person means: (1) his being sentenced or otherwise dealt with for the offence, or his acquittal; (2) the discontinuance of the proceedings; or (3) the decision not to prosecute him, whichever is the earlier: Criminal Justice and Public Order Act 1994 s 67(9).

26 Criminal Justice and Public Order Act 1994 s 67(2).

UPDATE

297-303 Powers to remove persons attending or preparing for, or to stop persons from proceeding to, a rave ... Grant, renewal and transfer of licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

297 Powers to remove persons attending or preparing for, or to stop persons from proceeding to, a rave

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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298. Power of court to forfeit sound equipment.

Where a person is convicted of an offence in relation to a rave¹ and the court is satisfied that any sound equipment² which has been seized from him³, or which was in his possession or under his control at the relevant time⁴, has been used at the gathering, the court may make an order for forfeiture in respect of that property⁵. In considering whether to make an order in respect of any property a court must have regard to the value of the property, and to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making)⁶. An order under these provisions operates to deprive the offender of his rights, if any, in the property to which it relates, and the property must (if not already in their possession) be taken into the possession of the police⁷.

Where any property has been forfeited, a magistrates' court may, on application by a claimant of the property, other than the offender from whom it was forfeited, make an order for delivery of the property to the applicant if it appears to the court that he is the owner of the property⁸. No application may be made by any claimant of the property after the expiration of six months from the date on which an order for forfeiture was made in respect of the property⁹. No such application may succeed unless the claimant satisfies the court either that he had not consented to the offender having possession of the property or that he did not know, and had no reason to suspect, that the property was likely to be used at a rave¹⁰. An order for delivery of the property to the applicant does not affect the right of any person to take, within the period of six months from the date of such an order, proceedings for the recovery of the property from the person in possession of it in pursuance of the order, but on the expiration of that period the right ceases¹¹.

The Secretary of State¹² has made regulations for the disposal of property, and for the application of the proceeds of sale of property, forfeited under the above provisions where no application by a claimant of the property has been made within the specified period or no such application has succeeded¹³.

1 Ie an offence under the Criminal Justice and Public Order Act 1994 s 63: see PARA 297.

2 As to the meaning of 'sound equipment' see PARA 297 note 22 (definition applied by the Criminal Justice and Public Order Act 1994 s 66(13)).

3 Ie under the Criminal Justice and Public Order Act 1994 s 64(4): see PARA 297.

4 'Relevant time' in relation to a person convicted in England and Wales of an offence under the Criminal Justice and Public Order Act 1994 s 63, means the time of his arrest for the offence or of the issue of a summons in respect of the offence or of the issue of a summons in respect of it: s 66(13).

5 Criminal Justice and Public Order Act 1994 s 66(1). The court may make such an order whether or not it also deals with the offender in respect of the offence in any other way and without regard to any restrictions on forfeiture in any enactment: s 66(2).

6 Criminal Justice and Public Order Act 1994 s 66(3).

7 Criminal Justice and Public Order Act 1994 s 66(4).

8 Criminal Justice and Public Order Act 1994 s 66(5).

9 Criminal Justice and Public Order Act 1994 s 66(7).

10 Criminal Justice and Public Order Act 1994 s 66(8).

11 Criminal Justice and Public Order Act 1994 s 66(9).

12 As to the Secretary of State see PARA 2.

13 Criminal Justice and Public Order Act 1994 s 66(10); and see the Police (Disposal of Sound Equipment) Regulations 1995, SI 1995/722; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 590. Regulations may also provide for the investment of money and for the audit of accounts: Criminal Justice and Public Order Act 1994 s 66(11). The power to make such regulations is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 66(12).

The Police (Disposal of Sound Equipment) Regulations 1995, SI 1995/722, provide for the disposal of property by sale or, if a police officer not below the rank of superintendent is satisfied that the nature of the property is such that it is not in the public interest that it should be sold, by other means in accordance with his directions: see regs 2, 3. The proceeds of any sale must be paid to the police authority and invested as the police authority thinks fit, with the proceeds and income from investment kept in a separate account (see reg 4(1) (2)). The money is applicable to defray expenses incurred in connection with the property and to make payments for such charitable purposes as the authority may select: see reg 4(3).

UPDATE

297-303 Powers to remove persons attending or preparing for, or to stop persons from proceeding to, a rave ... Grant, renewal and transfer of licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(4) DEMONSTRATIONS OF HYPNOTISM/299. Meaning of 'hypnotism'.

(4) DEMONSTRATIONS OF HYPNOTISM

299. Meaning of 'hypnotism'.

For the purposes of the statutory control of demonstrations of hypnotism for public entertainment¹, 'hypnotism' includes hypnotism, mesmerism and any similar act or process which produces or is intended to produce in any person any form of induced sleep or trance in which the susceptibility of the mind of that person to suggestion or direction is increased or intended to be increased, but does not include hypnotism, mesmerism or any such similar act or process which is self-induced².

1 le under the Hypnotism Act 1952: see PARA 300.

2 Hypnotism Act 1952 s 6.

UPDATE

297-303 Powers to remove persons attending or preparing for, or to stop persons from proceeding to, a rave ... Grant, renewal and transfer of licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(4) DEMONSTRATIONS OF HYPNOTISM/300. Control by licensing authority.

300. Control by licensing authority.

No person may give an exhibition, demonstration or performance of hypnotism¹ on any living person at or in connection with an entertainment to which the public is admitted, whether on payment or otherwise, unless the licensing authority² in whose area the place, or the greater or greatest part of it, is situated (the 'controlling authority')³ has authorised that exhibition, demonstration or performance⁴. Such an authorisation may be made subject to any conditions⁵.

If any person gives such an exhibition, demonstration or performance in contravention of these provisions, or in contravention of any conditions attached to an authorisation, he is liable on summary conviction to a fine not exceeding level 3 on the standard scale⁶.

A person who gives such an exhibition, demonstration or performance on any person under 18 years of age at or in connection with an entertainment to which the public is admitted, whether on payment or otherwise, unless he had reasonable cause to believe that the person had attained that age, is similarly liable⁷.

Any police constable⁸ may enter any premises if he has reasonable cause to believe that these provisions are being contravened⁹. Nothing in these provisions, however, prevents the exhibition, demonstration or performance of hypnotism, otherwise than at or in connection with an entertainment, for scientific or research purposes or for the treatment of mental or physical disease¹⁰.

1 As to the meaning of 'hypnotism' see PARA 299.

2 Lie within the meaning of the Licensing Act 2003: see the Hypnotism Act 1952 s 2(4) (substituted by the Licensing Act 2003 Sch 6 paras 25, 27(d)). As to the licensing authorities see PARA 3. As to the functions of licensing authorities see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 'Controlling authority' means, in relation to a place in England and Wales, the licensing authority in whose area the place, or the greater or greatest part of it, is situated: Hypnotism Act 1952 s 2(4) (as substituted: see note 2).

4 See the Hypnotism Act 1952 s 2(1) (amended by the Licensing Act 2003 Sch 6 paras 25, 27(a)). A function so conferred on a licensing authority is, for the purposes of the Licensing Act 2003 s 7 (exercise and delegation by licensing authority of licensing functions: see PARA 40), to be treated as a licensing function within the meaning of the 2003 Act: Hypnotism Act 1952 s 2(3A) (added by the Licensing Act 2003 Sch 6 paras 25, 27(c)).

5 Hypnotism Act 1952 s 2(2).

6 Hypnotism Act 1952 s 2(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 17 note 21.

7 Hypnotism Act 1952 s 3 (amended by the Family Law Reform Act 1969 Sch 1 Pt I; and by virtue of the Criminal Justice Act 1982 ss 38, 46).

8 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

9 Hypnotism Act 1952 s 4.

10 Hypnotism Act 1952 s 5.

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297-303 Powers to remove persons attending or preparing for, or to stop persons from proceeding to, a rave ... Grant, renewal and transfer of licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

300-307 Control by licensing authority ... Powers of duty

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(5) SEX ESTABLISHMENTS/301. Adoption of licensing provisions.

(5) SEX ESTABLISHMENTS

301. Adoption of licensing provisions.

A local authority¹ may resolve² that provisions relating to the control of sex establishments³ are to apply to its area⁴. 'Sex establishment' means a sex cinema or a sex shop⁵.

'Sex cinema' means any premises⁶, vehicle, vessel⁷ or stall used to a significant degree⁸ for the exhibition of moving pictures, by whatever means produced, which:

- 838 (1) are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage, sexual activity⁹ or acts of force or restraint associated with sexual activity¹⁰; or
- 839 (2) are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions¹¹,

but does not include a dwelling house to which the public is not admitted¹².

'Sex shop' means any premises¹³, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating:

- 840 (a) sex articles¹⁴; or
- 841 (b) other things intended for use in connection with, or for the purpose of stimulating or encouraging, sexual activity or acts of force or restraint associated with sexual activity¹⁵.

'Sex article' means:

- 842 (i) anything made for use in connection with, or for the purpose of stimulating or encouraging, sexual activity or acts of force or restraint associated with sexual activity¹⁶; and
- 843 (ii) any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article, and any recording of vision or sound, concerned primarily with the portrayal of, or primarily dealing with or relating to, or intended to stimulate or encourage, sexual activity or acts of force or restraint associated with sexual activity, or concerned primarily with the portrayal of, or primarily dealing with or relating to, genital organs or urinary or excretory functions¹⁷.

Provision has been made for the control of sex establishments already in use before the coming into effect of a local authority resolution¹⁸.

1 'Local authority' means a district or London borough council and the Common Council of the City of London: Local Government (Miscellaneous Provisions) Act 1982 s 2(5). See **LOCAL GOVERNMENT** vol 69 (2009) PARA 23. District councils no longer exist in Wales since the re-organisation there of local government under the Local Government (Wales) Act 1994: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 18. The Local Government (Wales) Act 1994 makes no specific amendment of the Local Government (Miscellaneous Provisions) Act 1982 in

this respect. However, amendment may be effected by the Local Government (Wales) Act 1994 s 17, since this contains a general provision for the transfer of functions to the new authorities.

2 The resolution specifies the day on which the provisions are to come into force in the area, which must be at least a month after the passing of the resolution: Local Government (Miscellaneous Provisions) Act 1982 s 2(1). A local authority must publish notice that it has passed a resolution in two consecutive weeks in a local newspaper circulating in its area: s 2(2). The first publication must not be later than 28 days before the day specified in the resolution for the coming into force of Sch 3 in the local authority's area: s 2(3). The notice must state the general effect of Sch 3: s 2(4). A resolution is ineffective if these requirements are not complied with and failure to comply will invalidate any decisions made under the licensing provisions: *R v Swansea City Council, ex p Quietlynn Ltd* (1983) Times, 19 October, DC (notice published outside the time limit); affd in part and revsd in part sub nom *R v Preston Borough Council, ex p Quietlynn Ltd* (1984) 83 LGR 308, CA; and see *R v Doncaster Metropolitan Borough Council, ex p Quietlynn Ltd* (1985) 83 LGR 461 at 507 (failure to state the general effect of the resolution); *R v Maidstone Borough Council, ex p Quietlynn Ltd* (1985) 83 LGR 461 at 512 (failure to specify in the resolution the date when the provisions were to come into force). There is no failure to comply with the requirements of the Local Government (Miscellaneous Provisions) Act 1982 s 2 where an advertisement of the passing of a resolution appears in a newspaper which is available at a point in time before the actual passing, if the official publication date of the newspaper is after the passing of the resolution: *R v Newham London Borough Council, ex p Sheptonhurst Ltd* (1985) 83 LGR 461 at 513 per Forbes J (resolution passed at 7.00 pm, an advertisement for which appeared in a newspaper available at 4.30 pm on the day in question, but whose official publication date was the following day).

3 The provisions of the Local Government (Miscellaneous Provisions) Act 1982 Sch 3: see s 2(1). The code of practice contained in Sch 3 is not mandatory nor exhaustive, and breaches of it do not invalidate a decision to refuse a licence, providing no unfairness to the applicant results: *R v Preston Borough Council, ex p Quietlynn Ltd* (1984) 83 LGR 308, CA. The provisions of the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 do not impede trade between member states and, therefore, do not infringe the EC Treaty art 28: Case C-23/89 *Quietlynn Ltd v Southend-on-Sea Borough Council* [1991] 1 QB 454, [1990] 3 All ER 207, ECJ.

4 Local Government (Miscellaneous Provisions) Act 1982 s 2(1).

5 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 2. A London borough council (including the Common Council of the City of London) may resolve that the definition of 'sex establishment' is also to include a sex encounter establishment or a hostess bar: see the Greater London Council (General Powers) Act 1986 ss 2, 12(1), (4)(a); the London Local Authorities Act 2007 ss 33, 34.

6 Premises are not to be treated as a sex cinema by reason only: (1) if they may be used for an exhibition of a film (within the meaning of the Licensing Act 2003 Sch 1 para 15: see PARA 31 note 14) by virtue of an authorisation (within the meaning of s 136: see PARA 132), of their use in accordance with that authorisation; or (2) of their use for an exhibition to which the Cinemas Act 1985 s 6 (certain non-commercial exhibitions) applies given by an exempted organisation within the meaning of s 6(6): Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 3(2) (amended by the Cinemas Act 1985 Sch 2 para 16; the Licensing Act 2003 Sch 6 paras 82, 85(1), (2)(b)).

Notwithstanding that by virtue of the Licensing Act 2003 Sch 6 para 95, the Cinemas Act 1985 has ceased to have effect in England and Wales, s 6 of that Act (other than s 6(3)), and ss 5, 20 and 21 so far as relating to s 6, continue to have effect there for the purposes of the definition of 'sex cinema': see the Licensing Act 2003 Sch 8 para 33(a). Subject to the Cinemas Act 1985 s 6(4), (5), s 6 applies to any film exhibition (other than one to which s 5 (exhibitions in private dwelling houses) applies which (a) is one to which the public are not admitted or are admitted without payment; or (b) does not fall within head (1) above but is given by an exempted organisation, and (in either case) satisfies the condition that either the exhibition is not promoted for private gain, or the sole or main purpose of the exhibition is to demonstrate any product, to advertise any goods or services or to provide information, education or instruction: Cinemas Act 1985 s 6(1), (2). A film exhibition is excluded from being one to which s 6 applies if it is organised solely or mainly as an exhibition for children who are members of a club, society or association the principal object of which is attendance at film exhibitions, unless the exhibition is given in a private dwelling house or as part of the activities of an educational or religious institution: s 6(4). A film exhibition is excluded from being one to which s 6 applies by virtue of head (b) above if on more than three out of the last preceding seven days the premises in question were used for the giving of a film exhibition to which s 6 so applied: s 6(5). For these purposes, 'exempted organisation' means a society, institution, committee or other organisation with respect to which there is in force at the time of the exhibition in question a certificate given by the Secretary of State certifying that he is satisfied that the organisation is not conducted or established for profit; and there must be paid to the Secretary of State in respect of the giving of such a certificate such reasonable fee as he may determine: s 6(6). The Secretary of State must not give such a certificate with respect to any organisation (i) the activities of which appear to him to consist of or include the giving of film exhibitions promoted for private gain; or (ii) the objects of which do not appear to him to consist of or include the giving of film exhibitions to which the public are admitted; and the Secretary of State may revoke such a certificate at any time if it appears to him that, since the certificate was given, the activities of the organisation have consisted of or included the giving of film exhibitions promoted for private gain: s 6(7). Certain certificates given under previous legislation have effect as

if given by the Secretary of State: see s 6(8). As to the Secretary of State see PARA 2; as to the meaning of 'promotion for private gain' see s 20; and as to the meanings of 'child' and film exhibition' see s 21(1) (definition of 'film exhibition' substituted by the Communications Act 2003 s 406(1), Sch 17 para 76).

7 'Vessel' includes any ship, boat, raft or other apparatus constructed or adapted for floating on water: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 5(1). Schedule 3 applies to hovercraft as it applies to vessels: Sch 3 para 5(2).

8 A higher standard is set for 'significant' than 'more than trifling'. No single factor is decisive and it is for the court of trial to decide which considerations are material to the individual case and what weight is to be attached to them. When deciding whether a business consists to a significant degree of the sale of sex articles, in almost all cases the following would be material: the ratio between the sexual and other aspects of the business, the absolute quantity of sales, the character of the business, the nature of the articles themselves and the nature of the display: *Lambeth London Borough Council v Grewal* (1985) 82 Cr App Rep 301, 150 JP 138, DC. See, however, *Watford Borough Council v Private Alternative Birth Control Information and Education Centres Ltd* [1985] Crim LR 594.

9 The term 'sexual activity' is not defined by the Local Government (Miscellaneous Provisions) Act 1982, but of the interpretation of the term 'human sexual activity' set out in PARA 277 note 7.

10 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 3(1)(a).

11 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 3(1)(b).

12 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 3(1).

13 No premises are to be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 4(2). The premises as a whole fall within Sch 3 para 4, not eg each separate stall within the premises: see *R v Newcastle-upon-Tyne City Council, ex p Christian Institute* [2001] LGR 165.

14 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 4(1)(a).

15 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 4(1)(b).

16 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 4(3)(a).

17 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 4(3)(b), (4)(a), (b).

18 See the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 paras 28, 29, 30(3). Without prejudice to any other enactment it is lawful for any person who was using any premises, vehicle, vessel or stall as a sex establishment immediately before the date of the first publication under s 2(2) (see note 2) of a notice of the passing of a resolution under s 2 by the local authority for the area, and had before the appointed day duly applied to the appropriate authority for a licence for the establishment, to continue to use the premises, vehicle, vessel or stall as a sex establishment until the determination of his application by the appropriate authority: Sch 3 para 28(1). It is unclear whether 'determination of the application' means determination by the appropriate authority or determination following any appeal. In Sch 3 paras 28, 29 'the appointed day', in relation to any area, means the day specified in the resolution passed under s 2 as the date upon which Sch 3 is to come into force in that area: Sch 3 para 28(2).

An application is determined by the appropriate authority, whether or not its decision can be challenged by judicial review, and an applicant is unable to call into question the legality of the decision in subsequent criminal proceedings instituted for operating without a licence: *Quietlynn Ltd v Plymouth City Council* [1988] QB 114, sub nom *Plymouth City Council v Quietlynn Ltd* [1987] 2 All ER 1040, DC, approved and explained in *Boddington v British Transport Police* [1999] 2 AC 143, [1998] 2 All ER 203, HL.

UPDATE

297-303 Powers to remove persons attending or preparing for, or to stop persons from proceeding to, a rave ... Grant, renewal and transfer of licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

300-307 Control by licensing authority ... Powers of duty

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(5) SEX ESTABLISHMENTS/302. Necessity for licence.

302. Necessity for licence.

No person may in any area in which the relevant provisions¹ are in force² use any premises, vehicle, vessel³ or stall as a sex establishment⁴ except under and in accordance with the terms of a licence granted⁵ by the appropriate authority⁶. Any person who uses any premises, vehicle, vessel or stall as a sex establishment, or proposes to do so, may apply⁷ to the appropriate authority for it to waive the requirement of a licence⁸, and the authority may do so in any case where it considers that to require a licence would be unreasonable or inappropriate⁹.

1 The provisions contained in the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 see PARAS 301, 303 et seq.

2 As to the application of the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 see PARA 301.

3 As to the meaning of 'vessel' see PARA 301 note 7.

4 As to the meaning of 'sex establishment' see PARA 301.

5 As to the grant of licences see PARA 303.

6 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 6(1). This requirement does not apply to the sale, supply or demonstration of articles which are manufactured for use primarily for the purposes of birth control, or primarily relate to birth control: Sch 3 para 6(2). 'The appropriate authority' means, in relation to any area for which a resolution has been passed under the Local Government (Miscellaneous Provisions) Act 1982 s 2 (see PARA 301), the local authority which passed it: Sch 3 para 5(1).

7 An application for waiver may be made either as part of an application for a licence or without such an application (Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 7(2)), and must be in writing, containing specified particulars and such additional particulars as the authority may reasonably require (see Sch 3 paras 7(3), 10(6)). The specified particulars are the applicant's full name, address and age (see Sch 3 para 10(2)) or, in the case of a body, its full name, the address of its registered or principal office and the full names and private addresses of its directors or other managers (see Sch 3 para 10(3)); and the full address of the premises (see Sch 3 para 10(4)) or, in the case of a vehicle, vessel or stall, where it is to be used (see Sch 3 para 10(5)).

8 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 7(1). A waiver may be for such period as the appropriate authority thinks fit (Sch 3 para 7(5)), and may be terminated on not less than 28 days' notice (Sch 3 para 7(7)).

9 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 7(4). Notice that an application has been granted must be given to the applicant: Sch 3 para 7(6).

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297-303 Powers to remove persons attending or preparing for, or to stop persons from proceeding to, a rave ... Grant, renewal and transfer of licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

300-307 Control by licensing authority ... Powers of duty

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(5) SEX ESTABLISHMENTS/303. Grant, renewal and transfer of licences.

303. Grant, renewal and transfer of licences.

The appropriate authority¹ may grant to any applicant², and from time to time renew³, a licence for the use of any premises, vehicle, vessel⁴ or stall specified in it for a sex establishment⁵ on such terms and conditions and subject to such restrictions⁶ as may be so specified⁷. No term, condition or restriction may, however, be so specified in so far as it relates to any matter in relation to which requirements or prohibitions are or could be imposed by or under the Regulatory Reform (Fire Safety) Order 2005⁸ in respect of the premises, vehicle, vessel or stall⁹.

If it thinks fit, the authority may transfer a licence to any other person on the application of that other person¹⁰.

An application for the grant, renewal or transfer of a licence must be made in writing to the authority¹¹ and a copy sent to the chief officer of police¹². Public notice¹³ of the application must be given¹⁴, and any person objecting to the application must give written notice¹⁵ of his objection to the authority, stating the grounds of his objection¹⁶, and written notice of the general terms of the objection must be given to the applicant before the authority considers his application¹⁷. In considering an application the authority must have regard to any observations submitted by the chief officer of police and any objections of which notice has been sent to it¹⁸.

Unless previously revoked¹⁹ or cancelled²⁰, a licence remains in force for one year or such shorter period as is specified in the licence²¹.

1 As to the meaning of 'the appropriate authority' see PARA 302 note 6.

2 A licence may not be granted: (1) to a person under the age of 18 years; (2) to a person who is disqualified (see PARA 304); (3) to a person, other than a body corporate, who is not resident in the United Kingdom or was not so resident throughout the six month period immediately preceding the date of the application; (4) to a body corporate not incorporated in the United Kingdom; or (5) to a person who has, within the 12 month period immediately preceding the date of the application, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 12(1). As to the meaning of 'United Kingdom' see PARA 16 note 8; and as to the meaning of 'vessel' see PARA 301 note 7.

A holder of a licence who has general control over a sex establishment uses the premises for a sex establishment and individuals who are using the same premises for a sex establishment do not need separate licences: *R v Newcastle upon Tyne City Council, ex p Christian Institute* [2001] LGR 165.

3 As to the power of an authority to refuse to renew a licence notwithstanding the absence of any change in circumstances since the licence was granted or last renewed see *R v Birmingham City Council, ex p Sheptonhurst Ltd* [1990] 1 All ER 1026, 87 LGR 830, CA.

4 See note 2.

5 As to the meaning of 'sex establishment' see PARA 301.

6 The appropriate authority may make regulations prescribing standard conditions applicable to licences (Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 13(1)), and where it has done so every licence granted, renewed or transferred by it is presumed to be subject to those conditions unless they have been expressly excluded or varied (Sch 3 para 13(4)). No standard condition may be prescribed by such regulations in so far as it relates to any matter in relation to which requirements or prohibitions are or could be imposed by or under the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541 (see **FIRE SERVICES**): Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 13(1A) (added by SI 2005/1541). Regulations may make different provision for sex cinemas and sex shops, and for different kinds of sex cinemas and sex shops: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 13(2). Regulations may cover: (1) the opening hours of sex establishments; (2) displays or advertisements on or in such establishments; (3) the

visibility of the interior to passers-by; and (4) any change of a sex cinema to a sex shop or a sex shop to a sex cinema: Sch 3 para 13(3). As to the meanings of 'sex cinema' and 'sex shop' see PARA 301.

As to the modification of these provisions in relation to London, so as to refer also to sex encounter establishments and hostess bars, see the Greater London Council (General Powers) Act 1986 ss 2, 12(1), (4)(d)-(f); the London Local Authorities Act 2007 s 33(2), (7).

A person may be supplied on request with a copy of the regulations on payment of such reasonable fee as the authority may determine: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 13(5). A certified copy of the regulations is prima facie evidence in any legal proceedings of the regulations: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 13(6). A licence holder must display a copy of the licence and of the standard conditions in a suitable place: Sch 3 para 14(1).

7 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 8(1) (numbered as such, and amended, by SI 2005/1541). The holder of a licence may apply to the appropriate authority for a variation of the terms, conditions or restrictions: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 18(1). The authority may make the specified variation, or make such variations as it thinks fit (including variations involving the imposition of terms, conditions or restrictions other than those specified in the application), or refuse the application: Sch 3 para 18(2), (3) (amended by SI 2005/1541). No variation is, however, to be so made in so far as it relates to any matter in relation to which requirements or prohibitions are or could be imposed by or under the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 18(4) (added by SI 2005/1541). As to appeal against the authority's decision see PARA 305.

An applicant for the grant, renewal or transfer of a licence under Sch 3 must pay a reasonable fee determined by the appropriate authority: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 19. As to the Council's power to make a proportionate increase in the licence fee for a following year to recoup the cost of a shortfall for the previous year see *R v Westminster City Council, ex p Hutton* (1985) 83 LGR 461 at 516. A London borough council (including the Common Council) may resolve that an applicant for the variation of a licence must also pay a reasonable fee: see the Greater London Council (General Powers) Act 1986 ss 2, 12(1), (4)(g).

8 le the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541: see **FIRE SERVICES**.

9 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 8(2) (added by SI 2005/1541).

10 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 9(2). Where the holder of a licence dies, the licence is deemed to have been granted to his personal representatives, and, unless previously revoked, it remains in force until the end of the three month period beginning with the death and then expires: Sch 3 para 15. The appropriate authority may extend or further extend this period if satisfied that this is necessary for the purpose of winding up the estate of the deceased and that no other circumstances make it undesirable: Sch 3 para 15.

11 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 10(1). As to the particulars to be specified in the application see Sch 3 para 10(2)-(6); and PARA 302 note 7.

12 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 10(14). 'The chief officer of police', in relation to any locality, means the chief officer of police for the police area in which the locality is situated: Sch 3 para 5(1). See further **POLICE** 36(1) (2007 Reissue) PARA 105. If a licence is granted the authority must send a copy of it to the chief officer of police: Sch 3 para 14(2).

13 Notice must in all cases be given by publishing an advertisement in a local newspaper circulating in the appropriate authority's area: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 10(8). The publication must not be later than seven days after the date of the application: Sch 3 para 10(9). Where the application is in respect of premises, notice of it must in addition be displayed for 21 days beginning with the date of the application on or near the premises and in a place where the notice can conveniently be read by the public: Sch 3 para 10(10). Every such notice which relates to premises must identify the premises: Sch 3 para 10(11). Every such notice which relates to a vehicle, vessel or stall must specify where it is to be used as a sex establishment: Sch 3 para 10(12). Subject to Sch 3 para 10(11)-(12), such a notice must be in such form as the appropriate authority may prescribe: Sch 3 para 10(13).

14 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 10(7).

15 Such notice must be given not later than 28 days after the date of the application: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 10(15). This does not restrict the giving of notice of objection before an application for a licence is made: *R v Preston Borough Council, ex p Quietlynn Ltd* (1984) 83 LGR 308, CA; *R v Watford Borough Council, ex p Quietlynn Ltd* (1984) 83 LGR 308, (1984) Times, 22 March, CA.

16 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 10(15).

17 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 10(16). No similar provision is made in respect of observations by the police (see the text to note 18) but there is an obligation of disclosure resting upon the principles of natural justice: *R v Birmingham City Council, ex p Quietlynn Ltd* (1986) 85 LGR 249 at 253, CA, per Donaldson MR. There may be a similar obligation of a disclosure in respect of observations from other authorities, eg fire, health, building: *R v Birmingham City Council, ex p Quietlynn Ltd* (1985) 83 LGR 461 at 484 per Forbes J. The appropriate authority may not without the consent of the person making the objection reveal his name or address to the applicant: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 10(17). There is no duty cast upon the appropriate authority by Sch 3 para 10(17) requiring it to ascertain whether any of the objectors would consent to their names and addresses being revealed to the applicant, for Sch 3 para 10(17) is not designed to afford the applicant an opportunity to make a personal and direct approach to the objector to see whether his objection could be satisfied: *R v Birmingham City Council, ex p Quietlynn Ltd* (1985) 83 LGR 461 at 488 per Forbes J; *R v Swansea City Council, ex p Quietlynn Ltd* (1983) Times, 19 October. Although there is no obligation to afford a hearing to objectors, the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 is not an exhaustive code and local authorities have a discretion to afford one: *R v Preston Borough Council, ex p Quietlynn Ltd* (1984) 83 LGR 308 at 313, CA, per Stephen Brown LJ. However, this discretion should be exercised sparingly, having regard to the risk of unfairness to the applicant, and a hearing afforded only where the authority could be satisfied that: (1) only those objectors whose written objections were received within the 28 day period prescribed by the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 10(15) (see the text and notes 15-16) were heard; (2) those objections could be confined to putting forward only those points relevant to grounds for refusal and notified in writing to the applicant under Sch 3 para 10(16); (3) if objectors were heard before the applicant, the applicant was given the opportunity of hearing and noting what the objectors said; and (4) if objectors were heard on the same occasion as the applicant, the proceedings were conducted as a hearing of the applicant's case and not as a contest between the opposing views of the applicant and the objectors: *R v Birmingham City Council, ex p Quietlynn Ltd* (1985) 83 LGR 461 at 487-488 per Forbes J.

18 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 10(18). Any objections not relevant to the grounds on which the authority can refuse a licence (see PARA 304) should be disregarded: see *R v Birmingham City Council, ex p Quietlynn Ltd* (1985) 83 LGR 461. An authority may, but is not required to, have regard to objections made before the application under the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 10 (see the text and notes 15-16) has been made: see *R v Watford Borough Council, ex p Quietlynn Ltd* (1984) 83 LGR 308, CA. Late objections may be taken into account, although fairness requires that the terms of any representations which the authority proposes to consider must be communicated to the applicant for the licence so that he can have an opportunity to comment: see *Miss Behavin' Ltd v Belfast City Council* [2007] UKHL 19, [2007] 3 All ER 1007, [2007] 1 WLR 1420.

19 It is revoked under the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 17(1): see PARA 304.

20 The appropriate authority may cancel the licence at the written request of the holder: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 16.

21 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 9(1). Where, before the date of expiry of a licence, an application has been made for its renewal or transfer, it is deemed to remain in force (in the case of a transfer, with any necessary modifications) notwithstanding that the date has passed (or, in the case of a transfer, that the prospective transferee is carrying on the business of the sex establishment), until the withdrawal of the application or its determination by the appropriate authority: Sch 3 para 11(1), (2). As to the effect of this provision in the case of an application for transfer see *Westminster City Council v Mackay* (1997) 161 JP 690, DC. As to the continuation in force of a licence pending appeal see PARA 305.

UPDATE

297-303 Powers to remove persons attending or preparing for, or to stop persons from proceeding to, a rave ... Grant, renewal and transfer of licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

300-307 Control by licensing authority ... Powers of duty

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

303 Grant, renewal and transfer of licences

NOTE 2--Heads (3), (4). References to 'United Kingdom' replaced by references to 'an EEA state': Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 12(1) (amended by SI 2009/2999).

TEXT AND NOTE 12--A copy of an application for the grant, renewal or transfer of a licence must now be sent to the chief officer of police (1) in a case where the application is made by means of a relevant electronic facility, by the appropriate authority not later than seven days after the date the application is received by the authority; and (2) in any other case, by the applicant not later than seven days after the date of the application: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 10(14) (Sch 3 para 10(14) substituted, Sch 3 para 10(14A) added by SI 2009/2999). 'Relevant electronic facility' means the electronic assistance facility referred to in Provision of Services Regulations 2009, SI 2009/2999, reg 38, or any facility established and maintained by the appropriate authority for the purpose of receiving applications under Sch 3 electronically: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 10(14A).

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(5) SEX ESTABLISHMENTS/304. Refusal and revocation of licences.

304. Refusal and revocation of licences.

Certain persons¹ are disqualified for holding a licence² for a sex establishment³, and in addition the appropriate authority⁴ may refuse an application for the grant or renewal of a licence on one or more grounds specified in heads (1) to (4) below, or an application for the transfer of a licence on either or both of the grounds specified in heads (1) and (2) below⁵. These grounds are:

- 844 (1) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason⁶;
- 845 (2) that if the licence were to be granted, renewed or transferred, the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself⁷;
- 846 (3) that the number of sex establishments in the relevant locality⁸ at the time the application is made⁹ is equal to or exceeds the number which the authority considers is appropriate¹⁰ for the locality¹¹;
- 847 (4) that the grant or renewal of the licence would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity are put, or the layout, character or condition of the premises, vehicle, vessel¹² or stall in respect of which the application is made¹³.

An objection to the grant of a licence solely on the ground that sex establishments should not exist has no part in an authority's discretion to refuse an application¹⁴.

The appropriate authority must give to an applicant an opportunity of appearing before and of being heard by a committee or sub-committee before refusing his application for the grant, renewal or transfer¹⁵ of a licence¹⁶.

The appropriate authority, after giving the holder of a licence an opportunity of appearing before and being heard by it, may at any time revoke the licence on certain grounds¹⁷.

1 Ie those specified in the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 12(1); see PARA 303 note 2.

2 Ie a licence granted under the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 8: see PARA 303.

3 See the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 12(1); and PARA 303. As to the meaning of 'sex establishment' see PARA 301.

4 As to the meaning of 'the appropriate authority' see PARA 302 note 6.

5 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 12(2). Such a refusal is subject to appeal under Sch 3 para 27 (see PARA 305): Sch 3 para 12(2).

6 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 12(3)(a). As to convictions which have become spent under the Rehabilitation of Offenders Act 1974 see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 660; and *Adamson v Waveney District Council* [1997] 2 All ER 898, 161 JP 787 (taxi licensing).

7 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 12(3)(b).

8 'The relevant locality' means, in relation to premises, the locality where they are situated, and, in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 12(5). The 'relevant locality' is not a pre-defined area. The area and size of the relevant locality are questions of fact for the local authority, but a whole town, and the whole of the authority's area, are too large to be taken as the relevant locality: *R v Peterborough City Council, ex p Quietlynn Ltd* (1986) 85 LGR 249, CA.

9 These provisions are modified in relation to London: see the Greater London Council (General Powers) Act 1986 ss 2, 12(1), (4)(c).

10 Nil may be an appropriate number for these purposes: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 12(4). A decision that there should be no sex establishments in the locality does not amount to a contravention of the right to free expression or the right to peaceful enjoyment of property under the Human Rights Act 1998 Sch 1 Pt I art 10, Pt II art 1: see *Miss Behavin' Ltd v Belfast City Council* [2007] UKHL 19, [2007] 3 All ER 1007, [2007] 1 WLR 1420.

11 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 12(3)(c).

12 As to the meaning of 'vessel' see PARA 301 note 7.

13 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 12(3)(d).

14 See *R v Newcastle upon Tyne City Council, ex p Christian Institute* [2001] LGR 165. See, however, note 10.

15 In the case of a refusal of a transfer the holder of the licence as well as the prospective transferee has a right to a hearing: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 10(19)(c).

16 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 10(19). If the committee or sub-committee before which the applicant appears does not have the power to determine the licence application, the body with the power of determination must not simply act upon a recommendation of that committee or sub-committee but must receive some report from it before refusing the application: *R v Chester City Council, ex p Quietlynn Ltd* (1983) Times, 19 October; affd in part and revsd in part sub nom *R v Preston Borough Council, ex p Quietlynn* (1984) 83 LGR 308, CA (failure of licensing panel to make a report to the decision-making committee amounted to a breach of the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 10(19), which breach could not be cured by fact that members of the committee could probably be expected to have known of the characteristics of the locality). Where the appropriate authority refuses to grant, renew or transfer a licence, it must, if required to do so by the applicant or holder of the licence, give him a written statement of the reasons for its decisions within seven days of his requiring it to do so: Sch 3 para 10(20). This requirement means more than simply indicating the ground or grounds on which a licence has been refused under Sch 3 para 12: see *R v Birmingham City Council, ex p Quietlynn Ltd* (1985) 83 LGR 461 at 490 per Forbes J.

17 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 17(1). The grounds are those specified in Sch 3 para 12(1) (see PARA 303 note 2), and those in Sch 3 para 12(3)(a), (b) (see heads (1)-(2) in the text). Where a licence is revoked, the authority must, if required to do so by the person who held it, give him a written statement of the reasons for its decision within seven days of his requiring it to do so: Sch 3 para 17(2). This requirement may mean more than simply indicating the ground or grounds under Sch 3 para 12 on which the licence has been revoked: see note 16. Where a licence is revoked, its holder is disqualified from holding or obtaining a licence in the area of the appropriate authority for a period of 12 months beginning with the date of revocation: Sch 3 para 17(3). If a licence is held jointly by two or more persons, partial revocation is not possible and the licence cannot be revoked in the name of one or some holders but allowed to continue in the name of the other(s); an application for transfer should be made by the other holder(s) before the revocation order comes into effect: see *Buchanan v Gresswell* (26 April 1995, unreported) (a decision under the Licensing Act 1964 (repealed)).

UPDATE

300-307 Control by licensing authority ... Powers of duty

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

304 Refusal and revocation of licences

NOTE 16--Reference to 'if required to do so by the applicant or holder of the licence' and 'within seven days of his requiring it to do so' omitted: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 10(20) (amended by SI 2009/2999).

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(5) SEX ESTABLISHMENTS/305. Appeals.

305. Appeals.

Any of the following persons, namely:

- 848 (1) an applicant for the grant, renewal or transfer of a licence¹ whose application is refused²;
- 849 (2) an applicant for the variation of the terms, conditions or restrictions on or subject to which any such licence is held whose application is refused³;
- 850 (3) a holder of any such licence who is aggrieved by any term, condition or restriction on or subject to which the licence is held⁴; or
- 851 (4) a holder of any such licence whose licence is revoked⁵,

may at any time before the expiration of the period of 21 days beginning with the relevant date⁶ appeal to a magistrates' court⁷. An applicant whose application for the grant or renewal of a licence is refused, or whose licence is revoked, on the ground that he belongs to any of certain categories of person⁸ has no right of appeal unless he seeks to show that the particular ground did not apply to him⁹. No appeal is available to an applicant for the grant or renewal of a licence whose application is refused either because the number of existing sex establishments is equal to or exceeds the appropriate number for the locality or because the grant or renewal would be inappropriate¹⁰.

An appeal against the decision of a magistrates' court may be brought to the Crown Court¹¹, whose decision is final¹². On an appeal, the magistrates' court or the Crown Court may make such order as it thinks fit¹³, and it is the duty of the appropriate authority¹⁴ to give effect to the order¹⁵. However, the authority need not give effect to the order of the magistrates' court until the time for bringing an appeal has expired¹⁶, and, if such an appeal is duly brought, until the determination or abandonment of the appeal¹⁷. Where a licence is revoked or an application for the renewal of a licence is refused¹⁸, the licence is deemed to remain in force¹⁹:

- 852 (a) until the time for bringing an appeal has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal²⁰; and
- 853 (b) where an appeal relating to the refusal of an application for such a renewal is successful and no further appeal is available, until the licence is renewed by the appropriate authority²¹.

Where the holder of a licence applies to vary it and the appropriate authority imposes any term, condition or restriction other than one specified in the application, the licence is deemed to be free of it until the time for bringing an appeal has expired²², and, if such an appeal is duly brought, until the determination or abandonment of the appeal²³.

1 I.e a licence granted under the Local Government (Miscellaneous Provisions) Act 1982 s 2(1), Sch 3: see PARA 303.

2 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 27(1)(a).

3 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 27(1)(b).

4 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 27(1)(c).

5 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 27(1)(d). As to revocation see Sch 3 para 17; and PARA 304.

6 'The relevant date' means the date on which the person is notified of the refusal of his application, the imposition of the term etc by which he is aggrieved or the revocation of his licence, as the case may be: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 27(4).

7 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 27(1) (amended by SI 2005/886), which is expressed to be subject to the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 27(2), (3). The appeal before the magistrates' court is not a review of the decision reached at first instance, but rather a complete rehearing: see eg *Sagnata Investments Ltd v Norwich Corp'n* [1971] 2 QB 614, [1971] 2 All ER 1441, CA; *R v (on the application of the Chief Constable of Lancashire) v Crown Court at Preston, R (on the application of Smith) v Crown Court at Lincoln* [2001] EWHC Admin 928, [2002] 1 WLR 1332, [2001] All ER (D) 166 (Nov). The appellate court ought not to attach any weight to the decision against which the appeal is brought, since neither the magistrates, nor the Crown Court if the decision is further appealed, would be an 'independent and impartial' tribunal within the meaning of the Human Rights Act 1998 Sch 1 Pt I art 6 if the court started off from a position favouring the decision of the licensing authority, which will itself be a party to any appeal.

8 le on any ground specified in the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 12(1): see PARA 303.

9 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 27(2).

10 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 27(3). The grounds mentioned are those specified in Sch 3 para 12(3)(c), (d): see PARA 304. As to the meaning of 'vessel' see PARA 301 note 7; and as to the meaning of 'sex establishment' see PARA 301.

11 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 27(5).

12 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 27(6).

13 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 27(7).

14 As to the meaning of 'the appropriate authority' see PARA 302 note 6.

15 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 27(8), which is expressed to be subject to Sch 3 para 27(9)-(12) (see the text and notes 16-23).

16 As to the time limit for appealing to the Crown Court, and as to extension of time, see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARAS 1987-1988.

17 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 27(9).

18 This provision is modified in relation to London: see the Greater London Council (General Powers) Act 1986 ss 2, 12(1), (4)(i).

19 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 27(10).

20 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 27(10)(a).

21 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 27(10)(b).

22 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 27(11).

23 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 27(12).

UPDATE

300-307 Control by licensing authority ... Powers of duty

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(5) SEX ESTABLISHMENTS/306. Offences and penalties.

306. Offences and penalties.

A person¹ is guilty of an offence² who:

- 854 (1) knowingly uses, or knowingly causes or permits the use of, any premises, vehicle, vessel³ or stall as a sex establishment⁴ except under and in accordance with the terms of a licence⁵; or
- 855 (2) being the holder of a licence, employs in the business of the establishment any person known to him to be disqualified⁶ from holding such a licence⁷; or
- 856 (3) being the holder of a licence, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in the licence⁸; or
- 857 (4) being the servant or agent of the holder of a licence, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in the licence⁹.

Any person who, in connection with an application for the grant, renewal or transfer of a licence¹⁰, makes a statement which he knows to be false in any material respect or which he does not believe to be true is guilty of an offence¹¹.

The holder of a licence who fails, without reasonable excuse, to keep a copy of the licence and any regulations prescribing standard conditions subject to which the licence is held exhibited in a suitable place¹² is guilty of an offence¹³.

The holder of a licence is guilty of an offence¹⁴ if, without reasonable excuse, he knowingly permits a person under 18 years of age to enter the establishment, or if he employs a person known to him to be under that age in the business of the establishment¹⁵.

Nothing in the provisions relating to the control of sex establishments¹⁶ affords a defence to a charge in respect of any offence at common law or under any other enactment¹⁷, or is to be taken into account in any way at a trial for such an offence¹⁸ or in certain other proceedings¹⁹.

1 Where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of the offence: Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 26(1). Where the affairs of a body corporate are managed by its members, Sch 3 para 26(1) applies to the acts and defaults of a member in connection with his function of management as if he were a director of the body corporate: Sch 3 para 26(2).

2 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 20(1). The penalty on summary conviction for an offence under Sch 3 para 20, 21 or 23(1), is a fine not exceeding £20,000: Sch 3 paras 22(1), 23(2) (both amended by SI 1984/447).

A London borough council (including the Common Council) may resolve that further provisions with regard to forfeiture are to apply: see the Greater London Council (General Powers) Act 1986 s 12(4)(h).

3 As to the meaning of 'vessel' see PARA 301 note 7.

4 As to the meaning of 'sex establishment' see PARA 301.

5 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 20(1)(a). The prosecutor must prove knowledge of the absence of a licence under Sch 3 para 6, as well as of use of the premises as a sex

establishment: *Westminster City Council v Croyalgrange Ltd* [1986] 2 All ER 353, [1986] 1 WLR 674, HL. It cannot be raised as a defence in criminal proceedings for this offence that there has not been a valid determination of a licence application because of procedural irregularities; on a proper construction of the statute, the licensing authority's decision to refuse an application is a determination of the application, whether or not it can be challenged by judicial review: *Quietlynn Ltd v Plymouth City Council* [1988] QB 114, sub nom *Plymouth City Council v Quietlynn Ltd* [1987] 2 All ER 1040, DC; approved and explained in *Boddington v British Transport Police* [1999] 2 AC 143, [1998] 2 All ER 203, HL; and see PARA 301 note 18.

6 It is thought that 'disqualified' means disqualified under the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 17(3) (see PARA 304).

7 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 20(1)(b).

8 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 20(1)(c).

9 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 20(1)(d).

10 As to such an application see PARA 303.

11 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 21. For the penalty see note 2.

12 He fails to comply with the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 14(1): see PARA 303 note 6.

13 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 22(2). The penalty on summary conviction is a fine not exceeding level 3 on the standard scale: Sch 3 para 22(2) (amended by virtue of the Criminal Justice Act 1982 s 46(1), (3), (4)). As to the standard scale see PARA 17 note 21.

14 For the penalty see note 2.

15 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 23(1).

16 He nothing in the Local Government (Miscellaneous Provisions) Act 1982 Sch 3: see PARA 301 et seq.

17 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 1(a), which refers to any enactment other than Sch 3.

18 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 1(b)(i).

19 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 1(b)(ii), (iii), which refer to (1) proceedings for forfeiture (a) under the Obscene Publications Act 1959 s 3 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 751-752), or (b) at the date at which this volume states the law, under the Protection of Children Act 1978 s 5 (indecent photographs etc of children: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 760), or, as from a day to be appointed, under the Schedule to that Act (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**); and (2) proceedings for condemnation under the Customs and Excise Management Act 1979 Sch 3 of goods which the Customs Consolidation Act 1876 s 42 prohibits to be imported or brought into the United Kingdom as being indecent or obscene (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1155 et seq): Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 1(b)(ii), (iii) (prospectively amended by the Police and Justice Act 2006 Sch 14 para 7, as from a day to be appointed under s 53(1)(b); at the date at which this volume states the law, no such day had been appointed). Nor does anything in the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 in any way limit the other powers exercisable under those Acts: Sch 3 para 1(c). As to the meaning of 'United Kingdom' see PARA 16 note 8.

UPDATE

300-307 Control by licensing authority ... Powers of duty

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/3. PARTICULAR FORMS OF ENTERTAINMENT/(5) SEX ESTABLISHMENTS/307. Powers of entry.

307. Powers of entry.

A constable¹ or an authorised officer of the local authority² for the area may, at any reasonable time, enter and inspect any sex establishment³ in respect of which a licence⁴ is in force⁵, with a view to seeing whether:

- 858 (1) the terms, conditions or restrictions on or subject to which the licence is held are complied with⁶;
- 859 (2) any person employed in the business of the establishment is disqualified⁷ from holding a licence⁸;
- 860 (3) any person under 18 years of age is in the establishment⁹; and
- 861 (4) any person under 18 years of age is employed in the business of the establishment¹⁰.

Where a warrant has been granted by a justice of the peace¹¹, a constable or an authorised officer of the local authority for the area may enter and inspect a sex establishment if he has reason to suspect that an offence¹² has been, is being or is about to be committed in relation to it¹³.

Any person who without reasonable excuse refuses to permit a constable or an authorised officer of a local authority to exercise any of these powers is guilty of an offence¹⁴.

1 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

2 As to the meaning of 'local authority' see PARA 301 note 1. Where an authorised officer of a local authority exercises power under the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 25, he must produce his authority if required to do so by the occupier of the premises or the person in charge of the vehicle, vessel or stall in relation to which the power is exercised: Sch 3 para 25(5). As to the meaning of 'vessel' see PARA 301 note 7.

3 As to the meaning of 'sex establishment' see PARA 301.

4 Is a licence granted under the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 8: see PARA 303.

5 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 25(1), (3).

6 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 25(1)(i), (3).

7 It is thought that 'disqualified' means disqualified under the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 17(3): see PARA 304.

8 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 25(1)(ii), (3).

9 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 25(1)(iii), (3).

10 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 25(1)(iv), (3).

11 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 25(4). A warrant will be needed only where the occupier is unwilling to allow constables or authorised officers to enter, inspect and obtain evidence. It will not be necessary if the occupier gives his consent and evidence obtained following such an entry will be admissible. Evidence need not be obtained following entry by a warrant under Sch 3 para 25(4) for it to be admissible, for Sch 3 para 25 makes no provision as regards the procedure by which evidence has to be collected and adduced: see *Tunbridge Wells Borough Council v Quietlynn Ltd* [1985] Crim LR 594.

12 It is an offence under the Local Government (Miscellaneous Provisions) Act 1982 Sch 3 paras 20, 21 or 23: see PARA 306.

13 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 25(2), (3). A London borough council (including the Common Council of the City of London) may resolve that further powers of seizure etc apply: see the Greater London Council (General Powers) Act 1986 s 12(4)(h).

14 Local Government (Miscellaneous Provisions) Act 1982 Sch 3 para 25(6). For every such refusal he is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Sch 3 para 25(6) (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 17 note 21.

UPDATE

300-307 Control by licensing authority ... Powers of duty

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(1) MEANING OF 'GAMBLING'/(i) Statutory Definitions/A. GAMBLING/308. Meanings of 'gambling' and 'remote gambling' for the purposes of the Gambling Act 2005.

4. GAMBLING; IN GENERAL

(1) MEANING OF 'GAMBLING'

(i) Statutory Definitions

A. GAMBLING

308. Meanings of 'gambling' and 'remote gambling' for the purposes of the Gambling Act 2005.

The Gambling Act 2005¹ defines 'gambling' as comprising gaming², betting³ and participating in a lottery⁴, in each case as those terms are defined in that Act⁵. Previous legislation had not contained any attempt at such comprehensive definition, preferring rather to contain partial definitions stating that a particular activity was, or was not, deemed to be betting, gaming or a lottery, and leaving the general meaning of such words to be decided by the courts as cases arose under the common law⁶.

'Remote gambling', for the purposes of the 2005 Act, means gambling in which persons participate by the use of remote communication⁷; and 'remote communication' means communication using the internet, telephone, television, radio, or any other kind of electronic or other technology for facilitating communication⁸.

Subject to certain exceptions⁹, participating in a lottery which forms part of the National Lottery¹⁰ is not¹¹ gambling for the purposes of the 2005 Act¹².

Participating in a competition or other arrangement under which a person may win a prize is not gambling for the purposes of the Gambling Act 2005 unless it is gaming¹³, participating in a lottery¹⁴ or betting¹⁵ within the statutory meanings of those terms¹⁶.

- 1 As to the application of the Gambling Act 2005 see PARAS 332-334.
- 2 Ie within the meaning of the Gambling Act 2005 s 6: see PARA 310.
- 3 Ie within the meaning of the Gambling Act 2005 s 9: see PARA 312.
- 4 Ie within the meaning of the Gambling Act 2005 s 14 (see PARA 317) and subject to s 15 (see the text and notes 9-12; and PARAS 310, 312-313, 687). Except where the context otherwise requires, a reference to participating in a lottery is to be construed in accordance with s 14 (see PARA 317): s 353(2)(c).
- 5 See the Gambling Act 2005 s 3.
- 6 *Seay v Eastwood* [1976] 3 All ER 153 at 155, [1976] 1 WLR 1117 at 1121, HL, per Lord Wilberforce. It was then for courts of first instance, using their local knowledge, experience of the world and common sense, to give a sensible interpretation of the expressions used, subject to review, where necessary, by the appellate courts: *Seay v Eastwood* at 155 and at 1121, HL, per Lord Wilberforce. See also *One Life Ltd v Roy* [1996] 2 BCLC 608 (gaming); *Re Senator Hanseatische Verwaltungsgesellschaft mbH* [1996] 4 All ER 933, [1997] 1 WLR 515, CA (lottery); *Re Titan International Inc* [1998] 1 BCLC 102, CA (lottery); *Re Vanilla Accumulation Ltd* (1998) Times, 24 February, [1998] All ER (D) 57 (lottery).
- 7 Gambling Act 2005 s 4(1). The Gambling Commission has published an advice note as to the two-stage test it uses to establish whether or not a remote gambling product falls into the category of 'betting' (as to the meaning of which see PARA 312) or 'gaming' (as to the meaning of which see PARA 310): see *Advice Note--Is a product remote betting or remote gaming?* (Gambling Commission, September 2008). That advice note is published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk. As to the Gambling Commission see PARAS 4-5.
- 8 Gambling Act 2005 s 4(2). The Secretary of State may by regulations provide that a specified system or method of communication is or is not to be treated as a form of remote communication for the purposes of the Gambling Act 2005, and s 4(2) is subject to any such regulations: ss 4(3), 353(1). At the date at which this volume states the law, no such regulations had been made. As to the Secretary of State see PARA 2.
- 9 Ie subject to the Gambling Act 2005 s 15(2), (3): see PARAS 310, 687.
- 10 As to the National Lottery see PARA 686 et seq.
- 11 Ie despite the Gambling Act 2005 s 3(c) (see the text and note 4): s 15(1).
- 12 Gambling Act 2005 s 15(1).
- 13 Ie within the meaning of the Gambling Act 2005 s 6: see PARA 310.
- 14 Ie within the meaning of the Gambling Act 2005 s 14: see PARA 317.
- 15 Ie within the meaning of the Gambling Act 2005 ss 9-11: see PARAS 312, 314.
- 16 Gambling Act 2005 s 339.

UPDATE

308-322 Meanings of 'gambling' and 'remote gambling' for the purposes of the Gambling Act 2005 ... The stake

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(1) MEANING OF 'GAMBLING'/(i) Statutory Definitions/A. GAMBLING/309. Facilities for gambling.

309. Facilities for gambling.

For the purposes of the Gambling Act 2005¹, a person provides facilities for gambling² if he:

- 862 (1) invites others to gamble in accordance with arrangements made by him;
- 863 (2) provides, operates or administers arrangements for gambling by others; or
- 864 (3) participates in the operation or administration of gambling by others³.

A person does not, however, provide facilities for gambling for the purposes of that Act by virtue only of:

- 865 (a) providing an article other than a gaming machine⁴ to a person who intends to use it, or may use it, in the course of any of the activities mentioned in heads (1) to (3) above;
- 866 (b) providing, otherwise than in the course of providing, operating or administering arrangements for gambling or participating in the operation or administration of gambling, an article to a person who intends to use it, or may use it, for gambling; or
- 867 (c) making facilities for remote communication⁵ available for use by persons carrying on any of those activities, or persons gambling in response to or in accordance with any of those activities⁶.

Despite head (c) above, a person provides facilities for gambling if:

- 868 (i) he makes facilities for remote communication available for use;
- 869 (ii) the facilities are adapted or presented in such a way as to facilitate, or to draw attention to the possibility of, their use for gambling; and
- 870 (iii) the nature, adaptation or presentation of the facilities is such that either they cannot reasonably be expected to be used for purposes other than gambling, or they are intended to be used wholly or mainly for gambling⁷.

The Secretary of State⁸ may by order, for the purposes of head (iii) above:

- 871 (A) provide that facilities of a specified nature, or adapted or presented in a specified way, cannot reasonably be expected to be used for purposes other than gambling;
- 872 (B) provide that facilities of a specified nature, or adapted or presented in a specified way, can reasonably be expected to be used for purposes other than gambling;
- 873 (C) specify criteria by which it is to be determined whether facilities can reasonably be expected to be used for purposes other than gambling;
- 874 (D) provide that facilities of a specified nature, or adapted or presented in a specified way, are to be taken as being intended to be used wholly or mainly for gambling;

- 875 (E) provide that facilities of a specified nature, or adapted or presented in a specified way, are to be taken as not being intended to be used wholly or mainly for gambling;
- 876 (F) specify criteria by which it is to be determined whether facilities are intended to be used wholly or mainly for gambling⁹.

- 1 As to the application of the Gambling Act 2005 see PARAS 332-334.
- 2 As to the meaning of 'gambling' see PARA 308.
- 3 Gambling Act 2005 s 5(1).
- 4 As to the meaning of 'gaming machine' see PARA 547.
- 5 As to the meaning of 'remote communication' see PARA 308.
- 6 Gambling Act 2005 s 5(2).
- 7 Gambling Act 2005 s 5(3).
- 8 As to the Secretary of State see PARA 2.
- 9 Gambling Act 2005 s 5(4). At the date at which this volume states the law, no such order had been made.

UPDATE

308-322 Meanings of 'gambling' and 'remote gambling' for the purposes of the Gambling Act 2005 ... The stake

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(1) MEANING OF 'GAMBLING'/(i) Statutory Definitions/B. GAMING/310. Meanings of 'gaming' and 'game of chance'.

B. GAMING

310. Meanings of 'gaming' and 'game of chance'.

For the purposes of the Gambling Act 2005¹, 'gaming' means playing a game of chance for a prize²; and 'game of chance' includes:

- 877 (1) a game that involves both an element of chance and an element of skill;
- 878 (2) a game that involves an element of chance that can be eliminated by superlative skill; and
- 879 (3) a game that is presented as involving an element of chance,

but does not include a sport³.

A person plays a game of chance if he participates in a game of chance whether or not there are other participants⁴ in the game, and whether or not a computer generates images or data taken to represent the actions of other participants in the game⁵; and a person plays a game of chance for a prize if he plays a game of chance and thereby acquires a chance of winning a prize, and whether or not he risks losing anything at the game⁶.

The Secretary of State⁷ may by regulations provide that a specified activity, or an activity carried on in specified circumstances, is or is not to be treated for the purposes of the 2005 Act as a game, a game of chance or a sport⁸.

Where participating in a lottery⁹ which forms part of the National Lottery¹⁰ would also constitute gaming within the meaning of the above provisions, it is to be treated as gaming for the purposes of the Gambling Act 2005 if and only if a person participating in the lottery is required to participate in, or to be successful in, more than three processes before becoming entitled to a prize¹¹.

'Gaming' is defined in the Betting and Gaming Duties Act 1981 as playing a game of chance for a prize¹².

1 As to the application of the Gambling Act 2005 see PARAS 332-334.

2 Gambling Act 2005 ss 6(1), 353(1). In the Gambling Act 2005, 'prize' in relation to gaming (except in the context of a gaming machine) means money or money's worth, and includes both a prize provided by a person organising gaming and winnings of money staked: ss 6(5), 353(1). As to the meaning of 'gaming machine' see PARA 547.

3 Gambling Act 2005 ss 6(2), 353(1). See also *R v Kelly* [2008] EWCA Crim 137, [2008] 2 All ER 840 (decided under the Gaming Act 1968 (repealed)) (Texas hold 'em poker (TH poker) is a game of chance). The Gambling Commission has published an advice note as to the two-stage test it uses to establish whether or not a remote gambling product falls into the category of 'betting' (as to the meaning of which see PARA 312) or 'gaming': see *Advice Note--Is a product remote betting or remote gaming?* (Gambling Commission, September 2008). That advice note is published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk. As to the Gambling Commission see PARAS 4-5; and as to the meaning of 'remote gambling' see PARA 308.

4 'Participant', in relation to a game of chance, includes a person who discharges an administrative or other function in relation to the game: Gambling Act 2005 s 353(1).

- 5 Gambling Act 2005 s 6(3).
- 6 Gambling Act 2005 s 6(4).
- 7 As to the Secretary of State see PARA 2.
- 8 Gambling Act 2005 s 6(6). At the date at which this volume states the law, no such regulations had been made.
- 9 As to the meaning of 'participating in a lottery' see PARA 308 note 4.
- 10 As to the National Lottery see PARA 686 et seq.
- 11 Gambling Act 2005 s 15(3). As to the meaning of 'prize' in relation to lotteries see PARA 317 note 4.
- 12 See the Betting and Gaming Duties Act 1981 s 33(1); and PARA 748 note 2.

UPDATE

308-322 Meanings of 'gambling' and 'remote gambling' for the purposes of the Gambling Act 2005 ... The stake

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(1) MEANING OF 'GAMBLING'/(i) Statutory Definitions/B. GAMING/311. Casinos and casino games.

311. Casinos and casino games.

For the purposes of the Gambling Act 2005¹, a casino is an arrangement whereby people are given an opportunity to participate in one or more casino games²; and 'casino game' means a game of chance³ which is not equal chance gaming⁴. It is immaterial for these purposes whether an arrangement is provided on one set of premises⁵ or on more than one and whether an arrangement is provided wholly or partly by means of remote communication⁶. The Secretary of State⁷ may, however, by regulations provide that a specified activity, or an activity carried on in specified circumstances, is to be or not to be treated as a casino game for the purposes of the 2005 Act⁸.

The Secretary of State must make regulations by reference to which any casino may be classified as a large casino, a small casino or below the minimum size for a licensed casino⁹. The regulations so made provide that:

880 (1) a casino is a large casino if the combined floor area of those parts of the casino which are used for providing facilities for gambling¹⁰ is equal to or exceeds 1,500 square metres, but is less than 3,500 square metres¹¹;

881 (2) a casino is a small casino if the combined floor area of those parts of the casino which are used for providing facilities for gambling is equal to or exceeds 500 square metres, but is less than 1,500 square metres¹²; and

882 (3) a casino is below the minimum size for a licensed casino if the combined floor area of those parts of the casino which are used for providing facilities for gambling is less than 500 square metres¹³.

1 As to the application of the Gambling Act 2005 see PARAS 332-334.

2 Gambling Act 2005 ss 7(1), 353(1).

3 As to the meaning of 'game of chance' see PARA 310.

4 Gambling Act 2005 ss 7(2), 353(1); and see the text and notes 7-8. For the purposes of the Gambling Act 2005, gaming is equal chance gaming if (1) it does not involve playing or staking against a bank; and (2) the chances are equally favourable to all participants; and for these purposes it is immaterial how a bank is described, and whether or not a bank is controlled or administered by a player: ss 8(1), (2), 353(1).

5 'Premises' includes any place and, in particular a vessel and a vehicle; and a reference to premises includes a reference to part of premises: ss 353(1), (2)(g). 'Vehicle' includes a train, an aircraft, a seaplane, and an amphibious vehicle (other than a hovercraft within the meaning of the Hovercraft Act 1968); and 'vessel' includes (1) anything, other than a seaplane or an amphibious vehicle, designed or adapted for navigation or other use in, on or over water; (2) a hovercraft (within the meaning of the Hovercraft Act 1968); and (3) anything, or any part of any place, situated in or on water: s 353(1).

6 Gambling Act 2005 s 7(4). As to the meaning of 'remote communication' see PARA 308.

7 As to the Secretary of State see PARA 2.

8 Gambling Act 2005 s 7(3). Section 7(2) (see the text and notes 3-4) is subject to such regulations: s 7(3). At the date at which this volume states the law, no such regulations had been made.

9 Gambling Act 2005 s 7(5)(b)-(d). Section 7(5)(a) (not yet in force) provides that the Secretary of State must also make regulations by reference to which any casino may be classified as a regional casino; but at the

date at which this volume states the law, none of the provisions of the 2005 Act relating to regional casinos had been brought into force. Regulations under s 7(5) may make provision by reference to (1) the number of gaming tables used or designated for the playing of specified casino games or classes of casino game; (2) the location of gaming tables used or designated for the playing of specified casino games or classes of casino game; (3) the concentration of gaming tables used or designated for the playing of specified casino games or classes of casino game; (4) the floor area used or designated for a specified purpose; (5) any combination of the matters listed in heads (1)-(4) above; or (6) any other matter: s 7(6). They may: (a) include provision for determining what floor area is to be treated as being used or designated for a purpose; (b) include provision for determining what activities do or do not amount to the playing of a specified casino game or class of casino game; (c) include provision for determining what is or is not to be treated as a gaming table (and, in particular, in what circumstances a number of tables are to be treated as if they were a single gaming table); (d) provide that a gaming table is to be treated as being used or designated only if specified conditions (which may, in particular, relate to purpose of use, extent of use or circumstances of use) are satisfied: s 7(7).

10 For these purposes, a reference to parts of a casino used for providing facilities for gambling is a reference to: (1) where a casino premises licence has effect in respect of the casino, those parts of the premises shown on the plan included in the licence as the parts that will be used for providing facilities for gambling in reliance on the licence; (2) where an application for a casino premises licence in respect of the casino has been made and not determined, those parts of the premises shown on the plan that accompanied the application as the parts which will be used for providing facilities for gambling in reliance on the licence; or (3) in any other case, those parts of the premises that would be required to be shown on the plan accompanying an application for a casino premises licence (were such an application to be made in respect of the premises) as the parts which would be used for providing facilities for gambling in reliance on the licence: Categories of Casino Regulations 2008, SI 2008/1330, reg 2(5). As to the meaning of 'providing facilities for gambling' see PARA 309; and as to casino premises licences see PARA 460 at head (1).

11 Categories of Casino Regulations 2008, SI 2008/1330, reg 2(1), (2).

12 Categories of Casino Regulations 2008, SI 2008/1330, reg 2(1), (3).

13 Categories of Casino Regulations 2008, SI 2008/1330, reg 2(1), (4).

UPDATE

308-322 Meanings of 'gambling' and 'remote gambling' for the purposes of the Gambling Act 2005 ... The stake

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(1) MEANING OF 'GAMBLING'/(i) Statutory Definitions/C. BETTING/312. Meanings of 'betting' and 'bet'.

C. BETTING

312. Meanings of 'betting' and 'bet'.

For the purposes of the Gambling Act 2005¹, 'betting' means making or accepting a bet² on:

- 883 (1) the outcome of a race, competition or other event or process;
- 884 (2) the likelihood of anything occurring or not occurring; or
- 885 (3) whether anything is or is not true³.

A transaction that relates to the outcome of a race, competition or other event or process may be a bet within the meaning of head (1) above despite the facts that the race, competition, event or process has already occurred or been completed, and that one party to the transaction knows the outcome⁴; and a transaction that relates to the likelihood of anything occurring or not occurring may be a bet within the meaning of head (2) above despite the facts that the thing has already occurred or failed to occur, and that one party to the transaction knows that the thing has already occurred or failed to occur⁵.

For the purposes of heads (1) to (3) above, a person makes a bet, despite the fact that he does not deposit a stake⁶ in the normal way of betting, if:

- 886 (a) he participates in an arrangement in the course of which participants are required to guess⁷ any of the matters specified in those heads;
- 887 (b) he is required to pay⁸ to participate⁹; and
- 888 (c) if his guess is accurate, or more accurate than other guesses, he is to win a prize¹⁰, or to enter a class among whom one or more prizes are to be allocated, whether or not wholly by chance¹¹.

It is immaterial for these purposes whether a person knows when he makes a payment that he thereby participates in an arrangement as a result of which he may win a prize¹².

Participating in a lottery¹³ which forms part of the National Lottery¹⁴ is not to be treated as betting for the purposes of the 2005 Act where it would satisfy the definition of 'betting' by virtue of heads (a) to (c) above¹⁵.

For the purposes of certain provisions of the Betting and Gaming Duties Act 1981¹⁶, a 'bet' does not include any bet made or stake hazarded in the course of, or incidental to, any gaming¹⁷.

1 As to the application of the Gambling Act 2005 see PARAS 332-334.

2 This does not include spread betting: see the Gambling Act 2005 s 10(1); and PARA 314. In the Gambling Act 2005, except where the context otherwise requires, a reference to accepting a bet includes a reference to negotiating a bet: s 353(2)(a).

3 Gambling Act 2005 ss 9(1), 353(1). The Gambling Commission has published an advice note as to the two-stage test it uses to establish whether or not a remote gambling product falls into the category of 'betting' or 'gaming' (as to the meaning of which see PARA 310): see *Advice Note--Is a product remote betting or remote gaming?* (Gambling Commission, September 2008). That advice note is published on the Commission's website,

accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk. As to the Gambling Commission see PARAS 4-5; and as to the meaning of 'remote gambling' see PARA 308.

4 Gambling Act 2005 s 9(2).

5 Gambling Act 2005 s 9(3).

6 In the Gambling Act 2005, 'stake' means an amount paid or risked in connection with gambling and which either (1) is used in calculating the amount of the winnings or the value of the prize that the person making the stake receives if successful; or (2) is used in calculating the total amount of winnings or value of prizes in respect of the gambling in which the person making the stake participates: s 353(1). 'Winnings', in relation to a bet, means anything won, whether in money or in money's worth: s 353(1). As to the meaning of 'gambling' see PARA 308.

7 For these purposes, a reference to guessing includes a reference to predicting using skill or judgment: Gambling Act 2005 s 11(2).

8 For these purposes, a reference to paying includes a reference to paying money, transferring money's worth, and paying for goods or services at a price or rate which reflects the opportunity to participate in an arrangement under which a participant may win a prize: Sch 1 para 2. It is immaterial to whom a payment is made and who receives benefit from a payment: Sch 1 para 3. A reference to paying does not include a reference to incurring the expense, at a normal rate, of sending a letter by ordinary post, making a telephone call, or using any other method of communication (Sch 1 para 5(1)); and for this purpose (1) a 'normal rate' is a rate which does not reflect the opportunity to participate in an arrangement under which a person may win a prize; and (2) ordinary post means ordinary first-class or second-class post, without special arrangements for delivery (Sch 1 para 5(2)).

9 The Gambling Act 2005 Sch 1 makes further provision about when a person is to be or not to be treated for these purposes as being required to pay to participate in an arrangement: s 11(3), Sch 1 para 1. See also note 8; and the text and note 12.

For the purposes of s 11, Sch 1, a requirement to pay in order to discover whether a prize has been won under an arrangement is to be treated as a requirement to pay to participate in the arrangement (Sch 1 para 6); and a requirement to pay in order to take possession of a prize which a person has or may have won under an arrangement is to be treated as a requirement to pay to participate in the arrangement (Sch 1 para 7). An arrangement is not, however, to be treated as requiring a person to pay to participate if under the arrangement (1) each person who is eligible to participate has a choice whether to participate by paying or by sending a communication; (2) the communication mentioned in head (1) above may be a letter sent by ordinary post, or another method of communication which is neither more expensive nor less convenient than participating by paying; (3) the choice is publicised in such a way as to be likely to come to the attention of each person who proposes to participate; and (4) the system for allocating prizes does not differentiate between those who participate by paying and those who participate by sending a communication: Sch 1 para 8(1). For these purposes, 'ordinary post' has the meaning given by Sch 1 para 5(2)(b) (see note 7 head (2)): Sch 1 para 8(2).

The Secretary of State may make regulations providing that an activity of a specified kind or performed in specified circumstances is to be or not to be treated for the purposes of s 11 as paying to participate in an arrangement: Sch 1 para 9. At the date at which this volume states the law, no such regulations had been made. As to the Secretary of State see PARA 2.

10 For these purposes, 'prize' includes any money, articles or services whether or not described as a prize, and whether or not consisting wholly or partly of money paid, or articles or services provided, by the members of the class among whom the prizes are allocated: Gambling Act 2005 s 11(4).

11 Gambling Act 2005 s 11(1).

12 Gambling Act 2005 Sch 1 para 4.

13 As to the meaning of 'participating in a lottery' see PARA 308 note 4.

14 As to the National Lottery see PARA 686 et seq.

15 Gambling Act 2005 s 15(4)(b).

16 As to the purposes of the Betting and Gaming Duties Act 1981 ss 1-10, 12(1), Sch 1 para 10: see PARA 748 et seq.

17 See the Betting and Gaming Duties Act 1981 s 12(3) (amended by the Finance Act 2002, ss 12(1), 141, Sch 4 Pt 1 paras 1, 9, Sch 40 Pt 1(4)). As to the meaning of 'gaming' see PARA 748 note 2.

UPDATE

308-322 Meanings of 'gambling' and 'remote gambling' for the purposes of the Gambling Act 2005 ... The stake

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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313. Pool betting.

In the context of betting, a pool has been popularly defined as 'the collective stakes of a number of persons who each stake a sum of money on one of the competitors in some competition, the proceeds being divided among the backers of the winner'¹. Since the promoter of the pool competition can neither win nor lose whatever the outcome of the competition, a bet by way of pool betting does not constitute a wager².

For the purposes of the Gambling Act 2005³, betting⁴ is pool betting if made on terms that all or part of winnings⁵:

- 889 (1) are to be determined by reference to the aggregate of stakes⁶ paid or agreed to be paid by the persons betting;
- 890 (2) are to be divided among the winners; or
- 891 (3) are to be or may be something other than money⁷;

and pool betting is horserace pool betting if it relates to horse racing in Great Britain⁸. Participating in a lottery⁹ which forms part of the National Lottery¹⁰ is not, however, to be treated as betting for the purposes of that Act where it would satisfy this definition of pool betting¹¹.

For the purposes of Part I of the Betting and Gaming Duties Act 1981¹², a bet¹³ is deemed to be made by way of pool betting¹⁴ unless it is a bet at fixed odds¹⁵, and, in particular, bets are held to be made by way of pool betting wherever a number of persons make bets:

- 892 (a) on terms that the winnings¹⁶ of such of those persons as are winners are to be, or are to be a share of, or are to be determined by reference to, the stake money paid or agreed to be paid by those persons, whether the bets are made by means of a totalisator, or by filling up and returning coupons or other printed or written forms, or in any other way¹⁷; or
- 893 (b) on terms that the winnings of such of those persons as are winners are to be, or include, an amount (not determined by the stake money paid or agreed to be paid by those persons) which is divisible in any proportions among such of those persons as are winners¹⁸; or
- 894 (c) on the basis that the winners or their winnings are to any extent to be at the discretion of the promoter¹⁹ or some other person²⁰.

A bet is a bet at fixed odds²¹ only if each of the persons making it knows or can know, at the time he makes it, the amount he will win, except in so far as that amount is to depend on the result of the event or events betted on, or on any such event taking place or producing a result, or on the numbers taking part in any such event, or on the starting prices²² or totalisator odds²³ for any such event, or on there being totalisator odds on any such event, or on the time when his bet is received by any person with or through whom it is made²⁴.

Newspaper 'fantasy competitions' involving the selection of an imaginary sports team or share portfolio have been held to be pool betting since the essence of the competition is the forecasting of uncertain future events and the competitors' winnings are determined not by reference to the stake money paid but by the relative success of their forecasts, and the entry

fees for the competition could accordingly be either characterised as or deemed to be a stake on a bet²⁵. Where, however, the promoter of a fantasy competition receives payment in connection with a competition which cannot be characterised as or deemed a stake in the ordinary sense, the competition will not involve pool betting²⁶.

1 See the Oxford English Dictionary.

2 See *Earl of Ellesmere v Wallace* [1929] 2 Ch 1, CA; *A-G v Luncheon and Sports Club Ltd* [1929] AC 400, HL; *Tote Investors Ltd v Smoker* [1968] 1 QB 509, [1967] 3 All ER 242, CA. As to wagers see PARA 319.

3 As to the application of the Gambling Act 2005 see PARAS 332-334.

4 As to the meaning of 'betting' see PARA 312.

5 As to the meaning of 'winnings' see PARA 312 note 6.

6 As to the meaning of 'stake' see PARA 312 note 6.

7 Gambling Act 2005 ss 12(1), 353(1).

8 Gambling Act 2005 ss 12(2), 353(1). As to the meaning of 'Great Britain' see PARA 16 note 8. As to totalisators see PARA 316; and for the special arrangements applying to totalisator betting on horse races see PARAS 9-11.

9 As to the meaning of 'participating in a lottery' see PARA 308 note 4.

10 As to the National Lottery see PARA 686 et seq.

11 Gambling Act 2005 s 15(4)(a).

12 In the Betting and Gaming Duties Act 1981 Pt I (ss 1-12): see PARA 748 et seq.

13 As to the meaning of 'bet' see PARA 312.

14 It seems that a scheme which does not permit participants to make any forecast or choice capable of affecting whether they will win or lose, or a scheme in which the majority of the participants in fact make no such forecast or choice, will not rank as pool betting: see *Customs and Excise Comrs v Dodd* [1961] 1 All ER 269, [1961] 1 WLR 144 (prize competition scheme in which participants could, but the overwhelming majority did not, change code numbers to select teams held not to be pool betting). The point was left open, in the case of a similar scheme, in *Singette Ltd v Martin* [1971] AC 407, [1970] 3 All ER 938, HL, per Lord Pearson; *Customs and Excise Comrs v Dodd* was cited in argument but not referred to in the decision. By the Betting Duties Act 1963 (repealed) a charge to pool betting duty in respect of such prize competition schemes was imposed: see now the Betting and Gaming Duties Act 1981 ss 6-8C; and PARA 753 et seq.

15 Betting and Gaming Duties Act 1981 s 10(1). As to bets at fixed odds see the text and notes 21-23.

16 For the purposes of the Betting and Gaming Duties Act 1981 Pt I (ss 1-12) (see PARA 748 et seq), 'winnings' includes winnings of any kind, and references to amount and to payment in relation to winnings is construed accordingly: s 12(4).

17 Betting and Gaming Duties Act 1981 s 10(1)(a). See note 15. Where bets fall within any of s 10(1)(a), (b) or (c) (and are thus to be held to be pool bets) but also fall or may fall within s 10(2) (see the text and notes 21-24) (and therefore would or might also qualify as fixed odds bets) the provisions of s 10(1)(a), (b) or (c), being mandatory, will prevail: *Customs and Excise Comrs v News International Newspapers Ltd* [1998] V & DR 267 at 274-275, CA, per Sir Christopher Slade.

18 Betting and Gaming Duties Act 1981 s 10(1)(b). See notes 15, 17.

19 For the purposes of the Betting and Gaming Duties Act 1981 Pt I, 'promoter', in relation to any betting, means the person to whom the persons making the bets look for the payment of their winnings, if any: s 12(4).

20 Betting and Gaming Duties Act 1981 s 10(1)(c). See notes 15, 17. Where a person carries on a business of receiving or negotiating bets and there is or has been issued in connection with that business any advertisement or other publication calculated to encourage in persons making bets of any description with or through him a belief that the bets are made on the basis mentioned in s 10(1)(c), then any bets of that

description subsequently made with or through him in the course of that business are deemed to be made on that basis: s 10(4).

21 le within the meaning of the Betting and Gaming Duties Act 1981 s 10. A bet made with or through a person carrying on a business of receiving or negotiating bets, being a bet made in the course of that business, is deemed not to be a bet at fixed odds if the winnings of the person by whom it is so made consist or may consist wholly or in part of something other than money: s 10(3).

22 'Starting prices' means, in relation to any event, the odds ruling at the scene of the event immediately before the start: Betting and Gaming Duties Act 1981 s 10(2). 'The odds ruling at the scene of the event' means the odds arrived at in the course of betting actually taking place there. Hence a scheme to pay winners of football pool coupon betting by reference to so called 'starting prices' on the football matches arrived at by averaging out the odds stated by five bookmakers on the matches, was held not to be fixed odds betting as there was no betting at the football matches. The scheme was, therefore, pool betting and exigible to pool betting duty: *Queen Bookmaker's Ltd v Lord Advocate* 1975 SC 253.

23 'Totalisator odds' means the odds paid on bets made by means of a totalisator, and at the scene of the event to which the bets relate: Betting and Gaming Duties Act 1981 s 10(2) (definition substituted by the Finance Act 2004 s 15(1), (6)).

24 Betting and Gaming Duties Act 1981 s 10(2).

25 See *Customs and Excise Comrs v News International Newspapers Ltd* [1998] V & DR 267, CA.

26 *Customs and Excise Comrs v News International Newspapers Ltd* [1996] V & DR 434 (affd [1998] V & DR 267, CA: see the text and note 25); and see the earlier decision of the VAT and Duties Tribunal in *News International Newspapers Ltd v Customs and Excise Comrs* [1995] V & DR 274 (newspaper fantasy competitions where entries were made over premium rate telephone lines did not involve pool betting since neither payments made by the telephone company to the telephone service provider (which were subsequently shared with the newspaper) nor payments made by subscribers to the telephone company for the cost of the telephone calls could be characterised as stakes on bets in the ordinary sense, nor did they fall within the Betting and Gaming Duties Act 1981 s 7(3) (as originally enacted) as such payments did not 'entitle' anyone to make a bet or to take part in a transaction within the meaning of s 7(3) (as originally enacted)).

UPDATE

308-322 Meanings of 'gambling' and 'remote gambling' for the purposes of the Gambling Act 2005 ... The stake

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(1) MEANING OF 'GAMBLING'/(i) Statutory Definitions/C. BETTING/314. Spread bets etc.

314. Spread bets etc.

The Betting and Gaming Duties Act 1981 defines a 'spread bet' as a bet which constitutes a contract the making or accepting of which is a regulated activity¹ within the meaning of the Financial Services and Markets Act 2000². A 'financial spread bet' is a spread bet the subject of which is a financial matter³.

Such a bet falls outside the definition of 'bet' for the purposes of the Gambling Act 2005⁴. Thus no premises licence⁵ is required for the use of premises for spread betting⁶; but the Secretary of State⁷ has power to make an order extending the requirement for a premises licence to premises used for spread betting⁸, subject to any specified exceptions⁹.

¹ ie within the meaning of the Financial Services and Markets Act 2000 s 22: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 84.

² See the Betting and Gaming Duties Act 1981 s 3(2) (substituted by the Finance Act 2007 Sch 25 Pt 2 paras 3, 4(1), (3)). Spread betting commonly involves gambling on the direction of shares, commodities or stock market indices. A contract for differences, or any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or an index or other factor designated for that purpose in the contract, is, subject to certain exceptions, a regulated activity within the meaning of the Financial Services and Markets Act 2000 s 22: see the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, art 85; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 224.

³ Betting and Gaming Duties Act 1981 s 3(4) (s 3(4), (5) substituted by the Finance Act 2001 s 6(1), Sch 1 para 1(5)). The Commissioners for Revenue and Customs may by order provide that a specified matter is, or is not, to be treated as a financial matter for this purpose: Betting and Gaming Duties Act 1981 s 3(5) (as so substituted). At the date at which this volume states the law, no such order had been made.

⁴ See the Gambling Act 2005 s 10(1). An order under the Financial Services and Markets Act 2000 s 22 which has the effect that a class of bet becomes or ceases to be a regulated activity may, in particular, include transitional provision relating to the application of the Gambling Act 2005 to that class of bet: s 10(2). Section 10 is subject to s 38(3) (power to amend s 37: see the text and notes 7-9): s 10(3).

⁵ As to premises licences see PARA 460 et seq.

⁶ Spread betting is not included in the gambling activities listed in the Gambling Act 2005 s 37(1) for which a premises licence is required: see PARA 616.

⁷ As to the Secretary of State see PARA 2.

⁸ ie he may make an order under the Gambling Act 2005 s 38(1) which has the effect of applying s 37(1) to betting of the kind referred to in s 10(1): see s 38(3); and PARA 616 note 10.

⁹ See the Gambling Act 2005 s 38(3); and PARA 616 note 10. At the date at which this volume states the law, no such order had been made.

UPDATE

308-322 Meanings of 'gambling' and 'remote gambling' for the purposes of the Gambling Act 2005 ... The stake

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(1) MEANING OF 'GAMBLING'/(i) Statutory Definitions/C. BETTING/315. Betting intermediaries and bookmakers.

315. Betting intermediaries and bookmakers.

For the purposes of the Gambling Act 2005¹, 'betting intermediary' means a person who provides a service designed to facilitate the making or acceptance of bets² between others³; and acting as a betting intermediary is providing facilities for betting⁴.

A 'bookmaker' is defined in the Betting and Gaming Duties Act 1981 as a person who:

- 895 (1) carries on the business of receiving or negotiating bets⁵ or conducting pool betting⁶ operations, whether as principal or agent and whether regularly or not; or
- 896 (2) holds himself out or permits himself to be held out, in the course of a business, as a person within head (1) above⁷.

It has been held that a bookmaker developing its own social responsibility policy and procedures does not voluntarily assume responsibility to all its problem gambler customers, in the sense of assuming responsibility to take care, with a concomitant liability to compensate customers injured in their mind or in their pocket by any failure to take care, although it may assume responsibility to a particular gambler following a specific request⁸.

1 As to the application of the Gambling Act 2005 see PARAS 332-334.

2 As to the meaning of 'bet' see PARA 312; and as to the meaning of 'accepting a bet' see PARA 312 note 2.

3 Gambling Act 2005 s 13(1).

4 Gambling Act 2005 s 13(2).

5 See note 2.

6 As to the meaning of 'pool betting' see PARA 313.

7 Betting and Gaming Duties Act 1981 s 12(4) (definition substituted by the Finance Act 2004 s 15(1), (7) (a)).

8 See *Calvert v William Hill Credit Ltd* [2008] EWHC 454 (Ch), [2008] All ER (D) 170 (Mar), applying *Customs and Excise Comrs v Barclays Bank plc* [2006] UKHL 28, [2007] 1 AC 181, [2006] 4 All ER 256.

UPDATE

308-322 Meanings of 'gambling' and 'remote gambling' for the purposes of the Gambling Act 2005 ... The stake

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(1) MEANING OF 'GAMBLING'/(i) Statutory Definitions/C. BETTING/316. Totalisators and totalisator operators.

316. Totalisators and totalisator operators.

A totalisator is a device, operated mechanically or electronically, used for the purpose of registering and indicating the value of money staked on individual horses or dogs in a race, so that the rate of return on winning bets may be rapidly calculated. There is no longer a statutory definition of 'totalisator'¹; but for the purposes of the Betting and Gaming Duties Act 1981 the 'operator', in relation to bets² made by means of a totalisator, means the person who, as principal, operates the totalisator³. A bet by way of totalisator betting is a species of pool betting⁴ and is therefore not a wager⁵ as the operator of the totalisator can neither win nor lose whatever the outcome of the event betted on⁶.

At the date at which this volume states the law, the Horserace Totalisator Board⁷ has the exclusive right to do, and to authorise other persons to do, either of the following things, namely:

- 897 (1) to carry on pool betting business⁸ in any form on a recognised horse race⁹; and
- 898 (2) by way of business to receive or negotiate bets on a recognised horse race at totalisator odds¹⁰.

As from a day to be appointed¹¹, however, the Totalisator Board is to be dissolved and an exclusive licence to do those things, and to provide facilities in relation to them, will be granted to the successor company¹².

1 The Betting, Gaming and Lotteries Act 1963 s 55(1) (repealed) defined 'totalisator' as 'the contrivance for betting known as the totalisator or pari mutuel, or any other machine or instrument of betting of a like nature, whether mechanically operated or not'. That definition was applied by the Betting and Gaming Duties Act 1981 s 12(4) but repealed for that purpose by the Finance Act 2007 Sch 25 Pt 2 paras 3, 7(1), (5), Sch 27 Pt 6(3).

2 As to the meaning of 'bet' see PARA 312.

3 Betting and Gaming Duties Act 1981 s 12(4).

4 As to the meaning of 'pool betting' see PARA 313.

5 As to wagering contracts see PARA 319.

6 *Tote Investors Ltd v Smoker* [1968] 1 QB 509, [1967] 3 All ER 242, CA. See also *A-G v Luncheon and Sports Club Ltd* [1929] AC 400, HL; *Shuttleworth v Leeds Greyhound Association Ltd* [1933] 1 KB 400, DC.

7 As to the constitution, continued existence and prospective dissolution of the Horserace Totalisator Board see PARA 9.

8 As to the meaning of 'pool betting business' see PARA 10 note 9.

9 As to the meaning of 'recognised horse race' see PARA 10 note 10.

10 See the Betting, Gaming and Lotteries Act 1963 s 14(1); and PARA 10.

11 Ie as from a day to be appointed under the Horserace Betting and Olympic Lottery Act 2004 s 40(1). At the date at which this volume states the law, no such day had been appointed.

12 See PARA 10.

UPDATE

308-322 Meanings of 'gambling' and 'remote gambling' for the purposes of the Gambling Act 2005 ... The stake

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(1) MEANING OF 'GAMBLING'/(i) Statutory Definitions/D. LOTTERIES/317. Meaning of 'lottery'.

D. LOTTERIES

317. Meaning of 'lottery'.

For the purposes of the Gambling Act 2005¹ an arrangement is a lottery, irrespective of how it is described, if it satisfies one of the descriptions of lottery set out in heads (1) to (3) or heads (a) to (d) below².

An arrangement is a simple lottery if:

- 899 (1) persons are required to pay³ in order to participate in the arrangement;
- 900 (2) in the course of the arrangement one or more prizes⁴ are allocated to one or more members of a class; and
- 901 (3) the prizes are allocated by a process which relies wholly on chance⁵.

An arrangement is a complex lottery if:

- 902 (a) persons are required to pay in order to participate in the arrangement;
- 903 (b) in the course of the arrangement one or more prizes are allocated to one or more members of a class;
- 904 (c) the prizes are allocated by a series of processes; and
- 905 (d) the first of those processes relies wholly on chance⁶.

The Secretary of State⁷ may by regulations provide that an arrangement of a specified kind is to be or not to be treated as a lottery for these purposes⁸.

1 As to the application of the Gambling Act 2005 see PARAS 332-334.

2 Gambling Act 2005 ss 14(1), 353(1).

3 The Gambling Act 2005 Sch 2 makes further provision about when an arrangement is to be or not to be treated for the purposes of s 14 as requiring persons to pay: s 14(6), Sch 2 para 1. For the purposes of s 14, Sch 2, a reference to paying includes a reference to paying money, transferring money's worth, and paying for goods or services at a price or rate which reflects the opportunity to participate in an arrangement: Sch 2 para 2. It is immaterial for the purposes of s 14, Sch 2 to whom a payment is made, and who receives benefit from a payment: Sch 2 para 3. It is also immaterial for those purposes whether a person knows when he makes a payment that he thereby participates in an arrangement: Sch 2 para 4. For these purposes: (1) a reference to paying does not include a reference to incurring the expense, at a normal rate, of sending a letter by ordinary post, making a telephone call, or using any other method of communication (Sch 2 para 5(1)); and (2) 'normal rate' is a rate which does not reflect the opportunity to enter a lottery, and ordinary post means ordinary first-class or second-class post (without special arrangements for delivery) (Sch 2 para 5(2)).

For the purposes of s 14, Sch 2, a requirement to pay in order to discover whether a prize has been won under an arrangement is to be treated as a requirement to pay in order to participate in the arrangement (Sch 2 para 6); and a requirement to pay in order to take possession of a prize which has or may have been allocated to a person under an arrangement is to be treated as a requirement to pay in order to participate in the arrangement (Sch 2 para 7). An arrangement is not to be treated as requiring persons to pay in order to participate if under the arrangement (a) each individual who is eligible to participate has a choice whether to participate by paying or by sending a communication; (b) the communication mentioned in head (a) above may be a letter sent by ordinary post (within the meaning given by Sch 2 para 5(2)(b): see head (2) above), or another method of communication which is neither more expensive nor less convenient than entering the lottery by paying; (c) the choice is publicised in such a way as to be likely to come to the attention of each

individual who proposes to participate; and (d) the system for allocating prizes does not differentiate between those who participate by paying and those who participate by sending a communication: Sch 2 para 8(1), (2).

4 For these purposes, 'prize' in relation to lotteries includes any money, articles or services whether or not described as a prize, and whether or not consisting wholly or partly of money paid, or articles or services provided, by the members of the class among whom the prize is allocated: Gambling Act 2005 ss 14(4), 353(1).

5 Gambling Act 2005 s 14(2). A process which requires persons to exercise skill or judgment or to display knowledge is to be treated for the purposes of s 14 as relying wholly on chance if (1) the requirement cannot reasonably be expected to prevent a significant proportion of persons who participate in the arrangement of which the process forms part from receiving a prize; and (2) the requirement cannot reasonably be expected to prevent a significant proportion of persons who wish to participate in that arrangement from doing so: s 14(5).

6 Gambling Act 2005 s 14(3).

7 As to the Secretary of State see PARA 2.

8 Gambling Act 2005 s 14(7). Such regulations may, in particular, provide that an activity of a specified kind or performed in specified circumstances is to be or not to be treated as paying to enter a lottery: Sch 2 para 9. The power in s 14(7) is not constrained by ss 14(1)-(6) or Sch 2, and regulations under s 14(7) may amend other provisions of s 14 or Sch 2: s 14(7). At the date at which this volume states the law, no such regulations had been made.

UPDATE

308-322 Meanings of 'gambling' and 'remote gambling' for the purposes of the Gambling Act 2005 ... The stake

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(1) MEANING OF 'GAMBLING'/(ii) Cross-category Activities/318. Transactions and arrangements which satisfy more than one statutory definition.

(ii) Cross-category Activities

318. Transactions and arrangements which satisfy more than one statutory definition.

A transaction which satisfies both the statutory definition of betting¹ and the statutory definition of gaming² is to be treated, for the purposes of the Gambling Act 2005³, as betting and not gaming if it is pool betting⁴, and otherwise as gaming and not betting⁵.

An arrangement which satisfies both the statutory definition of a game of chance⁶ and the statutory definition of a lottery⁷ is to be treated, for the purposes of the Gambling Act 2005:

- 906 (1) as a game of chance, and not as a lottery, if a person who pays in order to join the class amongst whose members prizes⁸ are allocated is required to participate in, or to be successful in, more than three processes before becoming entitled to a prize⁹;
- 907 (2) subject to head (1) above, as a lottery, and not as a game of chance, if it is an incidental non-commercial lottery¹⁰, a private society lottery¹¹, a work lottery¹² or a residents' lottery¹³ or it satisfies certain statutory conditions relating to customer lotteries¹⁴ or small society lotteries¹⁵ or it is promoted in reliance on a lottery operating licence¹⁶;
- 908 (3) as a game of chance and not as a lottery if it is any other arrangement¹⁷.

A transaction which satisfies the statutory definition of participating in a lottery¹⁸ and also either:

- 909 (a) satisfies the statutory definition of pool betting¹⁹; or
- 910 (b) satisfies the statutory definition of betting²⁰ by virtue of the provisions applying to prize competitions²¹,

is to be treated for the purposes of the Gambling Act 2005 as participating in a lottery, if it is an incidental non-commercial lottery²², a private society lottery²³, a work lottery²⁴ or a residents' lottery²⁵ or it satisfies certain statutory conditions relating to customer lotteries²⁶ or small society lotteries²⁷ or it is promoted in reliance on a lottery operating licence²⁸, and is to be treated as betting and not as participating in a lottery if it is any other transaction²⁹.

1 le the definition in the Gambling Act 2005 s 9: see PARA 312.

2 le the definition in the Gambling Act 2005 s 6: see PARA 310.

3 As to the application of the Gambling Act 2005 see PARAS 332-334.

4 le within the meaning of the Gambling Act 2005 s 12: see PARA 313.

5 Gambling Act 2005 s 16(1)-(3). This is subject to regulations under s 6(6) (see PARA 310): s 16(4).

6 le the definition in the Gambling Act 2005 s 6: see PARA 310.

- 7 Ie the definition in the Gambling Act 2005 s 14: see PARA 317.
- 8 As to the meaning of 'prize' in relation to gaming see PARA 310 note 2; and as to the meaning of 'prize' in relation to a lottery see PARA 317 note 4.
- 9 Gambling Act 2005 s 17(1), (2). Section 17 is subject to regulations under s 6(6) (see PARA 310) or s 14(7) (see PARA 317): s 17(5).
- 10 Ie if it satisfies the Gambling Act 2005 Sch 11 para 1(1)(a), (b): see PARA 659.
- 11 Ie if it satisfies the Gambling Act 2005 Sch 11 para 10(1)(a), (b): see PARA 660.
- 12 Ie if it satisfies the Gambling Act 2005 Sch 11 para 11(1)(a), (b): see PARA 660.
- 13 Ie if it satisfies the Gambling Act 2005 Sch 11 para 12(1)(a), (b): see PARA 660.
- 14 Ie if it satisfies the Gambling Act 2005 Sch 11 para 20(1)(a), (b): see PARA 661.
- 15 Ie if it satisfies the Gambling Act 2005 Sch 11 para 30(1)(a), (b): see PARA 662.
- 16 Gambling Act 2005 s 17(3); and see note 9. As to lottery operating licences see PARA 349 at head (10).
- 17 Gambling Act 2005 s 17(4); and see note 9.
- 18 See note 7.
- 19 Ie the definition in the Gambling Act 2005 s 12: see PARA 313.
- 20 See note 1.
- 21 Ie by virtue of the Gambling Act 2005 s 11: see PARA 312.
- 22 See note 10.
- 23 See note 11.
- 24 See note 12.
- 25 See note 13.
- 26 See note 14.
- 27 See note 15.
- 28 Gambling Act 2005 s 18(1), (2). Section 18 is subject to regulations under s 14(7) (see PARA 317): s 18(4).
- 29 Gambling Act 2005 s 18(3); and see note 28.

UPDATE

308-322 Meanings of 'gambling' and 'remote gambling' for the purposes of the Gambling Act 2005 ... The stake

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(2) GAMBLING CONTRACTS

(i) Nature of the Contract

319. In general.

A wagering contract is a contract between two parties professing to hold opposite views touching the issue of a future uncertain event where they agree that, dependent on the determination of that event, one shall win from the other, and that other shall pay or hand over to him, a sum of money or other stake¹. A gaming contract consists in the mutual promises which the players of a game necessarily make, expressly or by implication, in playing for a stake, as to its transfer upon the result of the game². Such a contract may itself be a wager³, but this will only be so if the parties or sides to the contract are limited to two, since a wager is necessarily, but a gaming contract not necessarily, a bipartite agreement⁴. If, therefore, there are more than two parties to an arrangement under which stakes contributed by the players are to change hands as a result of the game, this may be a gaming contract, but it is not a wagering contract⁵.

1 A wager or a contract by way of wagering only arises if not more than two parties, 'professing to hold opposite views touching the issue of a future uncertain event, mutually agree that, dependent upon the determination of that event, one shall win from the other, and that other shall pay or hand over to him, a sum of money or other stake; neither of the contracting parties having any other interest in that contract than the sum or stake he will so win or lose, there being no other real consideration for the making of such contract by either of the parties. It is essential to a wagering contract that each party may under it either win or lose, whether he will win or lose being dependent on the issue of the event, and, therefore, remaining uncertain until that issue is known. If either of the parties may win but cannot lose, or may lose but cannot win, it is not a wagering contract': see *Carlill v Carbolic Smoke Ball Co* [1892] 2 QB 484 at 490 per Hawkins J (affd [1893] 1 QB 256, CA); *Earl of Ellesmere v Wallace* [1929] 2 Ch 1, CA; *Ironmonger & Co v Dyne* (1928) 44 TLR 497, CA; *A-G v Luncheon and Sports Club Ltd* [1929] AC 400, HL; *Tote Investors Ltd v Smoker* [1968] 1 QB 509, [1967] 3 All ER 242, CA; *Kloeckner & Co AG v Gatoil Overseas Inc* [1990] 1 Lloyd's Rep 177. Thus a bet placed with a totalisator is not a wager: *Tote Investors Ltd v Smoker* [1968] 1 QB 509, [1967] 3 All ER 242, CA. As to totalisator betting see PARA 316.

2 *Earl of Ellesmere v Wallace* [1929] 2 Ch 1 at 38-39, CA, per Lawrence LJ.

3 Cf *Diggle v Higgs* (1877) 2 ExD 422, CA.

4 See the cases cited in note 1.

5 See *Earl of Ellesmere v Wallace* [1929] 2 Ch 1 at 50-52, CA, per Russell LJ; *Tote Investors Ltd v Smoker* [1968] 1 QB 509, [1967] 3 All ER 242, CA. Russell LJ observed that the statute 16 Car 2 c 7 (repealed) drew a distinction between persons who play at the games and persons who bet on the sides or hands of such as do play: *Earl of Ellesmere v Wallace* at 55.

UPDATE

308-322 Meanings of 'gambling' and 'remote gambling' for the purposes of the Gambling Act 2005 ... The stake

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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320. The profession of opposite views.

The statement that the parties to a contract by way of wagering must profess opposite views¹ does not mean that either party is required to avow to the other that he holds a particular opinion upon the event in question. Thus, in an ordinary horse race, a person who simply accepts the odds offered, and says no more than that he does so, unquestionably makes a bet, and usually a wager. Where the parties do differ is in their hope, expectation or, possibly, opinion, that the issue will belie the odds. If neither of the parties has any interest in the event save the hope or expectation created by the contract, the contract is a wager².

¹ See PARA 319 note 1.

² See *Kent v Bird* (1777) 2 Cowp 583. Hence policies of insurance made without insurable interest are wagers: see **INSURANCE** vol 25 (2003 Reissue) PARA 606. As to the law of contract generally see **CONTRACT**.

UPDATE

308-322 Meanings of 'gambling' and 'remote gambling' for the purposes of the Gambling Act 2005 ... The stake

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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321. Future uncertain event.

Although a wager is usually made on a future event¹ it can also be made on an event which has already taken place, such as the result of last year's boat race, or, indeed, on whether the earth is flat². Thus it is possible for two parties to wager with one another where one party is bound to win either because the result of the event is already well known, or, if it involves some scientific inquiry, where it has already been established beyond question.

¹ See PARA 319 note 1.

² See eg *Hampden v Walsh* (1876) 1 QBD 189; and see now the Gambling Act 2005 s 9(3); and PARA 312.

UPDATE

308-322 Meanings of 'gambling' and 'remote gambling' for the purposes of the Gambling Act 2005 ... The stake

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(2) GAMBLING CONTRACTS/(i) Nature of the Contract/322. The stake.

322. The stake.

The stake of each party is that which is at hazard between them¹, and may be said to quantify the whole interest of either party in the event. If either party has, before entering into the contract, such an interest in the event as the law considers an insurable interest², the term 'stake' is not properly applicable.

The transfer of the stake must be from one party to the other, for it is essential to a wagering contract that under it each party must either win or lose³. If the possibility of loss to one party or the other (not loss in the conventional sense of failure to win but in the sense of an actual payment or performance for the benefit of the other party) is absent, there is no stake, and the transaction is not a wager⁴.

1 'Stake' is now statutorily defined: see the Gambling Act 2005 s 353(1); and PARA 312 note 6.

2 See **INSURANCE**.

4 See PARA 319 note 1.

4 *Tote Investors Ltd v Smoker* [1968] 1 QB 509, [1967] 3 All ER 242, CA.

UPDATE

308-322 Meanings of 'gambling' and 'remote gambling' for the purposes of the Gambling Act 2005 ... The stake

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(2) GAMBLING CONTRACTS/(i) Nature of the Contract/323. Substance, not form.

323. Substance, not form.

As with any other contract, so in the case of a wager, the intention of the parties is a question of fact, and the court will look beyond the form in which the parties have couched the transaction in order to ascertain it¹. When the contract is good in form but annexed to it is a stipulation that it shall not be executed according to its terms, that will be taken into consideration in determining whether the transaction is real or colourable². Such a stipulation may either operate to defeat some of the expressed terms³, or may add a term which would give the transaction a different complexion⁴. Where there is no annexed stipulation, and the terms of the contract provide for an object such as the sale of goods or the supply of information, then if to that object there has been added an element of wagering, it is a question whether the original object has not been made merely an incident in the wager contract, or whether the element of wagering is severable from the rest of the contract⁵. A test of this, when the contract is in form a sale of goods or chattels at one price or another according as the happening of a named event shall determine, would seem to be whether the happening of the event does in fact tend to make the value of the article approximate to the price agreed in that event to be paid⁶, thus distinguishing a sale at the market price of a future day, or at a price formerly given for a similar article, and a sale at a price fixed by relation to an event which has no real bearing upon the value⁷.

Where there is a present price agreed, though the value of the article is unascertained at the time the contract for its sale is made, the transaction is not a wager⁸.

1 *Carlill v Carbolic Smoke Ball Co* [1892] 2 QB 484; affd [1893] 1 QB 256, CA.

2 *Universal Stock Exchange v Strachan* [1896] AC 166, HL; and see *Thacker v Hardy* (1878) 4 QBD 685, CA; *Grizewood v Blane* (1852) 11 CB 538; *Shaw v Caledonian Rly Co* (1890) 17 R 466 at 475, Ct of Sess.

3 *Universal Stock Exchange v Strachan* [1896] AC 166, HL.

4 *Hill v Fox* (1859) 4 H & N 359.

5 *Rourke v Short* (1856) 5 E & B 904; *Higginson v Simpson* (1877) 2 CPD 76; and cf *Caminada v Hulton* (1891) 60 LJMC 116, DC, distinguished in *R v Stoddart* [1901] 1 KB 177, CCR. Where the element of wagering is present in a transaction, if the contract is not mainly dependent upon and is severable from the wager, this element may be severed and the contract enforced without it: *Wilson v Cole* (1877) 36 LT 703; and see the judgment of Crompton J in *Rourke v Short* (1856) 5 E & B 904. Now that gambling contracts are enforceable (see PARA 327) such questions are less likely to arise.

6 *Rourke v Short* (1856) 5 E & B 904; and cf *Crofton v Colgan* (1859) 10 ICLR 133.

7 *Brogden v Marriott* (1836) 3 Bing NC 88 (where the contract was for the sale of a horse for £200 if he trotted 18 miles in an hour, and for one shilling if he did not).

8 Examples include the sale of next year's apple crop, the sale of the next haul of a fisherman's net, and the sale of an undeclared dividend. See also *Thacker v Hardy* (1878) 4 QBD 685, CA; *Marten v Gibbon* (1875) 33 LT 561, CA.

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(ii) The Stakeholder

324. Stakeholder's position.

The stakeholder is the agent of each depositor in respect of the sum deposited by him, having authority to pay such deposit to the winner, and is not the agent or trustee of both parties¹.

If he pays the winner after the loser has determined his authority to do so, the stakeholder is liable to the loser for the amount paid². The stakeholder is also liable if he does not pay strictly in accordance with his mandate, which he does not do unless the party to whom he pays has been declared the winner in accordance with the conditions of the wager³, for he cannot waive any of the conditions without the consent of the parties⁴.

1 *Hampden v Walsh* (1876) 1 QBD 189.

2 *Hodson v Terrill* (1833) 1 Cr & M 797.

3 *Carr v Martinson* (1859) 1 E & E 456. When the terms of the wager provide that disputes are to be settled by named persons (eg in the case of a horse race, by the stewards), they are not in the position of arbitrators; their decision need not be unanimous, but if arrived at in good faith and intended to be final, it is binding (*Parr v Winteringham* (1859) 1 E & E 394; and see *Benbow v Jones* (1845) 14 M & W 193); nor is a steward disqualified from acting because he has betted on the result (*Ellis v Hopper* (1858) 3 H & N 766).

4 *Weller v Deakins* (1827) 2 C & P 618.

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325. Revocation of authority.

An intimation from a party that he does not intend to abide by the wager, a demand for the return of his own stake¹, or, it seems, a demand for both stakes on the ground that he is the winner, are sufficient to determine the stakeholder's authority to pay the stake of that party to the other party², and then any money in the hands of the stakeholder ceases to be money deposited to abide the event, and becomes money held to the use of the depositor, which the stakeholder has no good reason for retaining³. Apart from express revocation, the stakeholder's authority is revoked if for any reason the decision of the event in the manner agreed upon becomes impossible⁴, or if either party dies before the event, or if the loser dies after the event⁵.

1 *Aubert v Walsh* (1810) 3 Taunt 277; *Busk v Walsh* (1812) 4 Taunt 290.

2 *Hastelow v Jackson* (1828) 8 B & C 221. This decision was doubted in *Mearing v Hellings* (1845) 14 M & W 711; cf, however, *Bate v Cartwright* (1819) 7 Price 540; *Carr v Martinson* (1859) 1 E & E 456; and the observations of Cockburn CJ in *Hampden v Walsh* (1876) 1 QBD 189. On the other hand, see the observations of Denman CJ in the course of the argument in *Gatty v Field* (1846) 9 QB 431 (where the contract was illegal, and nothing, except the bringing of the action, was done to determine the stakeholder's authority). But see *Strachan v Universal Stock Exchange* [1895] 2 QB 329 at 334, CA, per AL Smith LJ; affd sub nom *Universal Stock Exchange v Strachan* [1896] AC 166, HL.

3 *Varney v Hickman* (1847) 5 CB 271 at 282 per Maule J; *Strachan v Universal Stock Exchange (No 2)* [1895] 2 QB 697 at 705, CA, per AL Smith LJ; and see also *Busk v Walsh* (1812) 4 Taunt 290.

4 *Carr v Martinson* (1859) 1 E & E 456; *Sadler v Smith* (1869) LR 4 QB 214 (affd (1869) LR 5 QB 40, Ex Ch).

5 The reasons for this conclusion are these. The authority of an agent ceases upon the death of his principal: see **AGENCY** vol 1 (2008) PARA 188. If, therefore, the loser dies at any time before his stake has been paid over, the stakeholder ceases to have authority to pay it to the winner. If either party dies before the determination of the event, the bet, by the custom of betting, goes off (see *Manning v Purcell* (1855) 7 De GM & G 55); and so if the survivor proves to be the loser, the stakeholder would nevertheless have no authority to part with the loser's stake. If, however, the winner dies after the event and before payment over, nothing has occurred to determine the stakeholder's authority.

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326. Stakeholder's liability for security, or 'cover'.

Appropriation of the stake by the stakeholder, when he is himself a party to the wager¹ and the winner of it, is tantamount to payment, after which the stake cannot be recovered from him². In such a case, the stakeholder's authority to appropriate the sum in his hands extends to a sum which has been deposited to abide the event. It does not extend to anything deposited with him as security for the performance of the wager, for where there is a deposit by way of security the property in it does not pass when the transaction is completed but only on default in paying legally recoverable damages for breach of contract³.

1 The fact that he is also a party makes no difference to his position as a stakeholder: *Re Cronmire, ex p Waud* [1898] 2 QB 383, CA; *Manning v Purcell* (1855) 7 De GM & G 55.

2 *Strachan v Universal Stock Exchange (No 2)* [1895] 2 QB 697, CA.

3 *Re Cronmire, ex p Waud* [1898] 2 QB 383, CA.

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(iii) Legality and Enforceability

327. Enforceability of gambling contracts.

The fact that a contract relates to gambling¹ does not prevent its enforcement²; but this is without prejudice to any rule of law preventing the enforcement of a contract on the grounds of unlawfulness, other than a rule relating specifically to gambling³.

The statutory provisions which previously prevented enforcement of gambling contracts⁴ have been repealed⁵ with effect from 1 September 2007⁶. Those repeals do not, however, permit enforcement of a right which was created, or which emanates from an agreement made, before that date⁷.

Gambling is generally unlawful unless permitted by the measures contained in the Gambling Act 2005⁸, the National Lottery etc Act 1993⁹ or pursuant to the Financial Services and Markets Act 2000¹⁰.

1 Participating in a lottery which forms part of the National Lottery is gambling for these purposes: Gambling Act 2005 s 15(2)(b). As to the meaning of 'participating in a lottery' see PARA 308 note 4; and as to the National Lottery see PARA 686 et seq. As to the meaning of 'gambling' generally see PARA 308.

2 Gambling Act 2005 s 335(1).

3 Gambling Act 2005 s 335(2). As to unlawful contracts see generally **CONTRACT** vol 9(1) (Reissue) PARA 836 et seq.

4 (1) the Gaming Act 1710 s 1 (voiding of security for winnings or for repayment of gaming loan, etc); (2) remaining provisions of the Gaming Act 1835 (security deemed given for illegal consideration); (3) the Gaming Act 1845 s 18 (voiding of gaming contracts); (4) the Gaming Act 1892 s 1 (voiding of promise to repay) (all repealed). References in the Financial Services and Markets Act 2000 s 412(1)(a) to the Gaming Act 1845 s 18 and the Gaming Act 1892 s 1, and the Financial Services and Markets Act 2000 s 412(1)(b), are also repealed.

5 See the Gambling Act 2005 s 334(1).

6 Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, 2006/3272, art 2(4). For transitional provisions see art 6, Sch 4 (amended by SI 2007/1157).

7 Gambling Act 2005 s 334(2).

8 As to the control of gambling under the Gambling Act 2005 see PARA 330 et seq.

9 See PARA 686 et seq.

10 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) para 6. As to the status of such notes see *R (on the application of Westminster City Council) v National Asylum Support Service* [2002] UKHL 38 at [4]-[6], [2002] 4 All ER 654 at [4]-[6], [2002] 1 WLR 2956 obiter per Lord Steyn.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

327 Enforceability of gambling contracts

TEXT AND NOTES 4-7--See *Khodari v Al Tamimi* [2009] EWCA Civ 1042, [2009] All ER (D) 87 (Oct).

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328. Power of Gambling Commission to void bet.

The Gambling Commission¹ may make an order under these provisions in relation to a bet² accepted by or through the holder of a general betting operating licence³, a pool betting operating licence⁴ or a betting intermediary operating licence⁵, if and only if it is satisfied that the bet was substantially unfair⁶. Where the Commission makes such an order in relation to a bet:

- 911 (1) any contract or other arrangement in relation to the bet is void; and
- 912 (2) any money paid in relation to the bet, whether by way of stake⁷, winnings⁸, commission or otherwise, must be repaid to the person who paid it, and repayment may be enforced as a debt due to that person⁹.

Except where the order was made taking account of the fact that a party to the bet was convicted of an offence of cheating¹⁰ in relation to it, such an order may be made in relation to a bet only during the period of six months beginning with the day on which the result of the bet is determined¹¹. The Commission may make such an order in relation to the whole, or any part or aspect of, a betting transaction¹². Such an order may make incidental provision; in particular, an order may make provision about:

- 913 (a) the consequences of the order for bets connected with the bet which becomes void under the order;
- 914 (b) the consequences of the order for other parts or aspects of a betting transaction one part or aspect of which becomes void under the order¹³.

For the purposes of considering whether to make such an order in respect of a bet the Commission:

- 915 (i) may require a person by or through whom the bet is made or accepted to provide information or documents in relation to it; and
- 916 (ii) may take into account information received from any other person¹⁴;

and a person commits an offence if without reasonable excuse he fails to comply with such a requirement¹⁵.

Where the Commission makes such an order in relation to a bet, a party to the bet or to any contract or other arrangement in relation to the bet may appeal to the Gambling Appeals Tribunal¹⁶.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'bet' see PARA 312.

3 As to the meaning of 'general betting operating licence' see PARA 349 at head (3).

4 As to the meaning of 'pool betting operating licence' see PARA 349 at head (4); and as to the meaning of 'pool betting' see PARA 313.

The Gambling Act 2005 ss 336-338 (see the text and notes 5-16; and PARA 329) apply to a bet accepted by or through (1) the Tote; (2) a person carrying on a sponsored pool betting business; or (3) the persons having the management of an approved horse racecourse, where the act of accepting the bet is an activity to which the Gambling Act 2005 (Horserace Totalisator Board) Order 2007, SI 2007/2102, art 3(3) applies (see PARA 615 note 3), as they apply to a bet accepted by or through the holder of a pool betting operating licence: art 5. For these purposes, 'the Tote' means the Horserace Totalisator Board; 'approved horse racecourse' means any horse racecourse in respect of which a betting premises licence or an occasional use notice for the time being has effect; 'pool betting business' means business involving the receiving or negotiating of bets made by way of pool betting; 'sponsored pool betting' means pool betting by means of facilities provided by the Tote, or provided on an approved horse racecourse with the authority of the Tote by the persons having the management of the course; and 'sponsored pool betting business' means business involving the receiving or negotiating of bets made by way of sponsored pool betting: art 2(2), Table. As to the meaning of 'pool betting' see PARA 313 (definition applied by art 2(2), Table). As to the constitution, continued existence and prospective dissolution of the Horserace Totalisator Board see PARA 9.

5 As to the meaning of 'betting intermediary operating licence' see PARA 349 at head (5); and as to the meaning of 'betting intermediary' see PARA 315.

6 Gambling Act 2005 s 336(1), (3). In considering whether a bet was unfair the Commission must, in particular, take account of any of the following that applies: (1) the fact that either party to the bet supplied insufficient, false or misleading information in connection with it; (2) the fact that either party to the bet believed or ought to have believed that a race, competition or other event or process to which the bet related was or would be conducted in contravention of industry rules; (3) the fact that either party to the bet believed or ought to have believed that an offence under s 42 (cheating: see PARA 618) had been or was likely to be committed in respect of anything to which the bet related; and (4) the fact that either party to the bet was convicted of an offence under s 42 in relation to the bet: s 336(4). 'Industry rules' means rules established by an organisation having, by virtue of an agreement, instrument or enactment, responsibility for the conduct of races, competitions or other events or processes: s 337(7).

7 As to the meaning of 'stake' see PARA 312 note 6.

8 As to the meaning of 'winnings' see PARA 312 note 6.

9 Gambling Act 2005 s 336(2).

10 Is an offence under the Gambling Act 2005 s 42: see PARA 618.

11 Gambling Act 2005 s 336(5), (6).

12 Gambling Act 2005 s 337(2).

13 Gambling Act 2005 s 337(3).

14 Gambling Act 2005 s 337(4).

15 Gambling Act 2005 s 337(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 337(6). As to the standard scale see PARA 17 note 21.

16 Gambling Act 2005 s 337(1). As to the Gambling Appeals Tribunal see PARA 6. The following provisions of Pt 7 (ss 140-149) (see PARAS 6, 434 et seq) have effect (with any necessary modifications) in relation to such an appeal as they have effect in relation to an appeal under Pt 7, ie ss 142-147, 149: s 337(1). The prescribed fee for filing such an appeal is £8,710: see the Gambling Appeals Tribunal Fees Regulations 2006, SI 2006/3287, reg 2, Schedule Pt 1.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue)
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329. Interim moratorium in relation to a bet.

Where the Gambling Commission¹ has reason to suspect that it may wish to make a voiding order² in relation to a bet³, the Commission may make an order under the following provisions in relation to the bet⁴. Such an order has effect for the period of 14 days beginning with the day on which it is made, subject to any extension⁵ and without prejudice to the making of a new order⁶; and while it has effect in relation to a bet, an obligation to pay money in relation to the bet, whether by way of stake⁷, winnings⁸, commission or otherwise, has no effect⁹.

The Commission may cancel such an order, without prejudice to the making of a new order¹⁰; and it must cancel such an order as soon as is reasonably practicable after it ceases to entertain the suspicion¹¹ that it may wish to make a voiding order¹².

The Commission is not liable to make any payment on account only of the fact that it has made an order under the above provisions, and has not made a subsequent voiding order¹³; but this is without prejudice to any power of a court in legal proceedings, whether for tort or otherwise¹⁴.

1 As to the Gambling Commission see PARA 6.

2 Ie an order under the Gambling Act 2005 s 336(1): see PARA 328.

3 As to the meaning of 'bet' see PARA 312.

4 Gambling Act 2005 s 338(1). As to the application of s 338 to a bet accepted by or through (1) the Tote; (2) a person carrying on a sponsored pool betting business; or (3) the persons having the management of an approved horse racecourse, where the act of accepting the bet is an activity to which the Gambling Act 2005 (Horserace Totalisator Board) Order 2007, SI 2007/2102, art 3(3) applies (see PARA 615 note 3), see art 5, cited in PARA 328 note 4.

5 Ie any extension under the Gambling Act 2005 s 338(4). The Commission may by order extend the period for which an order under s 338(1) has effect; and (1) such an order may extend that period by the addition of not more than 14 days; and (2) more than one order may be so made in relation to a bet: s 338(4).

6 Gambling Act 2005 s 338(3).

7 As to the meaning of 'stake' see PARA 312 note 6.

8 As to the meaning of 'winnings' see PARA 312 note 6.

9 Gambling Act 2005 s 338(2).

10 Gambling Act 2005 s 338(5).

11 Ie the suspicion mentioned in the Gambling Act 2005 s 338(1).

12 Gambling Act 2005 s 338(6).

13 Gambling Act 2005 s 338(7).

14 Gambling Act 2005 s 338(8).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(3) REGULATION OF GAMBLING UNDER THE GAMBLING ACT 2005; IN GENERAL/(i) Outline of the Legislation; Licensing Objectives/330. Outline of the legislation.

(3) REGULATION OF GAMBLING UNDER THE

(i) Outline of the Legislation; Licensing Objectives

330. Outline of the legislation.

The Gambling Act 2005 contains a new regulatory system to govern the provision of all gambling¹ in Great Britain², other than the National Lottery³ and spread betting⁴. Two comprehensive offences are established: providing facilities for gambling or using premises for gambling, in either case without the appropriate permission⁵. Such permission may come from a licence, permit, or registration granted pursuant to the Act⁶ or from an exemption given by the Act⁷. Where authority to provide facilities for gambling is obtained under the Act, it is subject to varying degrees of regulation, depending on the type of gambling, the means by which it is conducted, and the people by whom and to whom it is offered⁸.

The Gambling Act 2005 introduces a unified regulator for gambling in Great Britain, the Gambling Commission ('the Commission')⁹, and a new licensing regime for commercial gambling, to be conducted by the Commission or by licensing authorities¹⁰, depending on the matter to be licensed¹¹. The Commission and licensing authorities share between them responsibility for all those matters previously regulated by licensing justices¹². The Commission does not, however, regulate spread betting, which is currently the preserve of the Financial Services Authority¹³, or the National Lottery, which is regulated by the National Lottery Commission¹⁴. Those aside, the Commission now regulates all commercial gambling in Great Britain. The Commission is responsible for granting operating and personal licences¹⁵ for commercial gambling operators and personnel working in the industry. It also regulates certain lottery managers and promoters¹⁶. The 2005 Act sets out different types of operating licence that cover the full spectrum of commercial gambling activities conducted in Great Britain¹⁷. It also makes provision for the Commission to have powers of entry and inspection to regulate gambling, with safeguards for those subject to the powers¹⁸; and establishes a Gambling Appeals Tribunal¹⁹ to hear appeals from decisions made by the Commission²⁰.

Licensing authorities have new powers to license gambling premises within their areas²¹, as well as undertaking functions in relation to lower stake gaming machines²² and clubs and miners' welfare institutes²³. There is a new system of temporary use notices which authorise premises that are not licensed generally for gambling purposes to be used for certain types of gambling, for limited periods²⁴.

The Gambling Act 2005 contains three licensing objectives which underpin the functions that the Commission and licensing authorities perform²⁵.

Regulation of gambling in Great Britain is to be achieved through a variety of measures established under the Gambling Act 2005, including secondary legislation²⁶, conditions on licences²⁷, codes of practice²⁸ and guidance²⁹. The Act recognises and accommodates the significant technological changes that have taken place in the last 40 years and requires regulation of gambling where the player is not present on the operator's premises; for example, operators based in Great Britain must obtain an operating licence to authorise the provision of gambling via remote communication such as interactive television or the internet³⁰.

The Gambling Act 2005 revises the law of gambling; for example commercial bingo premises and casinos do not now have to operate as clubs with a 24 hour membership rule³¹ and a new class of betting intermediary operating licence has been introduced, to cater for the development of betting exchanges³². The Act also repeals legislation that has prevented contracts relating to gambling from being enforceable through the courts³³ and makes significant changes to the regime for casinos³⁴. It introduces a new regime for gaming machines³⁵.

The Gambling Act 2005 provides protection for children and vulnerable adults from the effects of harmful gambling by creating a number of specific offences to prevent children and young people from being given access to inappropriate or harmful gambling opportunities³⁶. In particular, it is an offence to invite or permit a child or a young person to gamble contrary to the provisions of the Act³⁷. The Commission is required to promote socially responsible gambling through licence conditions and codes of practice directed at those providing facilities for gambling³⁸. The Act also provides powers for the Commission to void bets that are unfair, for example due to cheating³⁹.

A revised regime for the law of lotteries is contained in the 2005 Act, regulating lotteries in two ways: either as exempt lotteries⁴⁰, or as licensable lotteries⁴¹. The Act also makes provision for the advertising of gambling, creating new offences relating to the advertising of unlawful gambling⁴² and providing powers for the Secretary of State⁴³ to make regulations controlling the content of gambling advertisements⁴⁴.

The Gambling Act 2005 establishes a series of authorisations for private and non-commercial gambling in Great Britain, including authorisations for domestic gaming and betting⁴⁵, and provisions for gaming and lotteries at non-commercial events⁴⁶.

Schedule 18 to the 2005 Act makes transitional provisions⁴⁷ and these are supplemented by subordinate legislation, in particular by the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006⁴⁸.

The provisions of the Gambling Act 2005 were brought into force piecemeal by a series of commencement orders⁴⁹. With a few exceptions⁵⁰, the provisions of the 2005 Act were fully in force on 1 September 2007⁵¹.

1 As to the meaning of 'gambling' see PARA 308.

2 As to the meaning of 'Great Britain' see PARA 16 note 8.

3 As to the National Lottery see PARA 686 et seq.

4 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) para 3. As to the status of such notes see PARA 327 note 10. As to spread betting see PARA 314.

5 See the Gambling Act 2005 ss 33, 37; and PARAS 615-616.

6 As to licences etc see the Gambling Act 2005 Pts 5-9 (ss 65-234); and PARA 349 et seq.

7 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) para 7. As to exemptions see PARA 648 et seq.

8 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) para 8.

9 As to the Gambling Commission see PARA 4; and as to its functions, powers and duties see PARAS 335-343.

10 As to the licensing authorities see PARA 3.

11 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) para 8.

12 See note 11.

- 13 As to the Financial Services Authority see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 4 et seq.
- 14 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) para 9. As to the National Lottery Commission see PARA 7.
- 15 As to operating licences see PARA 349 et seq; and as to personal licences see PARA 400 et seq.
- 16 As to lottery operating licences see PARA 349 at head (10); and as to lottery managers' operating licences see PARA 377 at head (2).
- 17 See PARA 349 et seq.
- 18 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) para 10. As to powers of entry and inspection see PARA 600 et seq.
- 19 As to the Gambling Appeals Tribunal see PARA 6.
- 20 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) para 11.
- 21 As to premises licences see PARA 460 et seq.
- 22 As to gaming machine permits see PARA 562 et seq.
- 23 As to clubs and miners' welfare institutes see PARA 578 et seq.
- 24 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) para 12. As to temporary use notices see PARA 534 et seq.
- 25 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) para 13. As to the licensing objectives see PARA 331.
- 26 As to powers to make regulations and orders see generally s 355.
- 27 As to conditions on licences see PARAS 357 et seq, 409 et seq.
- 28 As to codes of practice see PARA 337.
- 29 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) para 14. As to the power to issue guidance see PARA 338.
- 30 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) para 15. As to operating licences for remote gambling see PARA 351.
- 31 As to casino operating licences and bingo operating licences see PARA 349 at heads (1)-(2).
- 32 As to betting intermediary operating licences see PARA 349 at head (5).
- 33 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) para 16. As to the enforceability of gambling contracts see PARA 327.
- 34 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) paras 17, 18. As to casinos see PARA 311.
- 35 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) para 19. As to gaming machines see PARA 547 et seq.
- 36 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) para 20.
- 37 As to offences relating to children and young persons see PARA 621 et seq.
- 38 As to licence conditions see PARAS 357 et seq, 409 et seq; and as to codes of practice see PARA 337.
- 39 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) para 20. As to the power to void bets see PARAS 328-329.
- 40 As to exempt lotteries see PARA 659 et seq.

41 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) para 21.

42 See PARA 678.

43 As to the Secretary of State see PARA 2.

44 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) para 22. As to the power to make such regulations see PARA 680.

45 As to domestic gaming and betting see PARAS 648-650.

46 See the Explanatory Notes to the Gambling Act 2005 (Crown copyright) para 23. As to non-commercial gaming see PARAS 651-653.

47 The Gambling Act 2005 Sch 18 Pt 1 (paras 1-4) provides for the transitional continuation of licences etc granted under previous legislation (see Sch 18 para 2) and transitional protection for casinos below minimum licensable size (see Sch 18 para 3). A commencement order may include provision for a reference in the Gambling Act 2005 or in another enactment to anything done under or by virtue of that Act to be taken, for such transitional purposes as may be specified, as including a reference to a thing done under or by virtue of an enactment repealed by that Act: Sch 18 para 4. For these purposes, a reference to a commencement order is a reference to an order under s 358(1): Sch 18 para 1(a). Sch 18 Pt 1 is without prejudice to the generality of s 355(1)(c) (power to make regulations etc).

Schedule 18 Pt 2 (paras 5-11) provides that applications for licences or permits might be made in advance of the commencement of the provisions of the 2005 Act in connection with which they are required (Sch 18 paras 5-7); and makes provision for interim applications (Sch 18 para 8) and for the conversion of existing licences etc (Sch 18 paras 9, 10). As to the provision that may be made by orders under Sch 18 Pt 2 see Sch 18 para 11.

48 See the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, which provides as follows:

82 (1) Schedule 4 Pt 2 (paras 2-16) (amended by SI 2007/1157; SI 2007/2169) contains transitional provisions relating to the grant and renewal of licences and other documents, and registrations, under enactments repealed by the Gambling Act 2005;

83 (2) the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 Pt 3 (paras 17-33) (as so amended) provides for the continuation of certain certificates and permits issued under the Gaming Act 1968 (repealed) which were in force immediately before 1 September 2007, or which were granted or renewed on or after that date and for the conversion of certain such permits into permits under the Gambling Act 2005;

84 (3) the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 Pt 4 (paras 34-38) (as so amended) makes provision with respect to licences etc granted under the Gambling Act 2005 before 1 September 2007; no such licence or permit, whether or not granted under the provisions of the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4, was to take effect until that date (Sch 4 para 34(1); for exceptions with regard to personal licences see Sch 4 paras 34(2), 52);

85 (4) Sch 4 Pt 5 (paras 39-43) (amended by SI 2007/1157) makes provision for advance applications for operating licences by existing operators;

86 (5) the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 Pt 6 (paras 44-52) (amended by SI 2007/2169) makes transitional arrangements with respect to personal licences;

87 (6) the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 Pt 7 (paras 53-66) (amended by SI 2007/1157; SI 2007/2169) makes provision for the conversion of licences etc issued under repealed enactments into premises licences under the Gambling Act 2005 (these provisions are particularly significant in relation to casinos and are considered below in that context);

88 (7) the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 Pt 8 (paras 67-77) provides for the conversion of lottery registrations under the Lotteries and Amusements Act 1976 (repealed) into operating licences or registrations under the Gambling Act 2005;

89 (8) the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 Pt 9 (paras 78-93) (amended by SI 2007/1157) provides for the conversion of

club registrations under the Gaming Act 1968 (repealed) into club gaming and club machine permits under the Gambling Act 2005;

- 90 (9) the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 Pt 10 (paras 94-100) provides for the conversion of permits under the Gaming Act 1968 s 34 (repealed) into family entertainment centre gaming machine permits under the Gambling Act 2005; and
- 91 (10) the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 Pt 11 (paras 101-107) provides for the conversion of permits under the Lotteries and Amusements Act 1976 s 16 (repealed) into prize gaming permits under the Gambling Act 2005.

The full text of the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 is set out in the current edition of Paterson's Licensing Acts.

49 See the Gambling Act 2005 s 358 and the commencement orders made thereunder.

50 The following provisions relating to casinos were brought into force on 20 May 2008: (1) the Gambling Act 2005 s 7(5)(b)-(d), (6), (7) (see PARA 311); and (2) ss 159-165 (see PARA 471 et seq), s 175(2)-(8) (see PARA 506), s 204 (see PARA 474) and Sch 9 (see PARA 507), so far they relate to large and small casinos: Gambling Act 2005 (Commencement No 8) Order 2008, SI 2008/1326, art 2, Schedule. At the date at which this volume states the law, the following provisions relating to casinos were not in force: the Gambling Act 2005 s 7(5)(a) (see PARA 311); s 175(1) (see PARA 506); and the provisions listed in head (2) above so far as they relate to regional casinos. Nor was Sch 16 para 17 (amendment of the Private Security Industry Act 2001 Sch 2 para 8(3)) in force.

51 Subject to the exceptions referred to in note 50, the remaining provisions of the Gambling Act 2005 were brought into force on 1 September 2007 by the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 2(4) (substituted by SI 2007/2169).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(3) REGULATION OF GAMBLING UNDER THE GAMBLING ACT 2005; IN GENERAL/(i) Outline of the Legislation; Licensing Objectives/331. The licensing objectives.

331. The licensing objectives.

In the Gambling Act 2005, a reference to the licensing objectives is a reference to the objectives of:

- 917 (1) preventing gambling¹ from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- 918 (2) ensuring that gambling is conducted in a fair and open way; and
- 919 (3) protecting children² and other vulnerable persons from being harmed or exploited by gambling³.

The Gambling Commission⁴ must:

- 920 (a) aim to pursue and, if appropriate, have regard to those objectives when carrying out any of its statutory functions⁵;
- 921 (b) explain, in the statement of principles that it is required to prepare⁶, how the principles to be applied are expected to assist it in its pursuit of those objectives⁷;
- 922 (c) have regard to those objectives in considering an application for an operating licence⁸ or a personal licence⁹.

A licensing authority¹⁰ must have regard to the licensing objectives in exercising its statutory functions¹¹ with regard to club gaming permits and club machine permits¹² and licensed premises gaming machine permits¹³. In exercising its statutory functions with regard to:

- 923 (i) premises licences¹⁴, a licensing authority must aim to permit the use of premises for gambling in so far as it thinks is reasonably consistent with those objectives¹⁵;
- 924 (ii) family entertainment centre gaming machine permits¹⁶ and prize gaming permits¹⁷, a licensing authority may, but need not, have regard to those objectives¹⁸.

1 As to the meaning of 'gambling' see PARA 308.

2 'Child' means an individual who is less than 16 years old: Gambling Act 2005 ss 45(1), 353(1).

3 Gambling Act 2005 ss 1, 353(1).

4 As to the Gambling Commission see PARA 4.

5 See the Gambling Act 2005 s 22; and PARA 335. As to the functions of the Commission see PARAS 335-343.

6 See under the Gambling Act 2005 s 23: see PARA 336.

7 See the Gambling Act 2005 s 23(2); and PARA 336.

8 See the Gambling Act 2005 s 70(1)(a); and PARA 355. As to the meaning of 'operating licence' see PARA 349 note 2.

9 See the Gambling Act 2005 s 70(1)(a), as applied by s 128; and PARA 402. As to the meaning of 'personal licence' see PARA 400.

10 As to the licensing authorities see PARA 3.

11 Ie its functions under the Gambling Act 2005 Sch 12 (see PARA 583 et seq) and Sch 13 (see PARA 571 et seq).

12 See the Gambling Act 2005 Sch 12 para 27; and PARA 584. This is subject to the duty to have regard to any relevant guidance under s 25 (see PARA 338): see Sch 12 para 27.

13 See the Gambling Act 2005 Sch 13 para 4; and PARA 572.

14 Ie its functions under the Gambling Act 2005 Pt 8 (ss 150-215, Sch 9): see PARA 460 et seq.

15 See the Gambling Act 2005 s 153(1)(c); and PARA 464.

16 Ie its functions under the Gambling Act 2005 Sch 10: see PARA 562 et seq.

17 Ie its functions under the Gambling Act 2005 Sch 14: see PARA 593 et seq.

18 See the Gambling Act 2005 Sch 10 para 7(3); and PARA 564; Sch 14 para 8(3); and PARA 594.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(ii) Application of the Legislation

332. Application of the Gambling Act 2005 to the Crown.

The Gambling Act 2005 binds the Crown¹; but it has no effect in relation to anything done on, or in relation to any use of, premises² occupied, temporarily or permanently, by any of Her Majesty's forces³.

1 Gambling Act 2005 s 354(1).

2 As to the meaning of 'premises' see PARA 311 note 5.

3 See the Gambling Act 2005 s 354(2) (prospectively amended by the Armed Forces Act 2006 Sch 16 para 245, as from a day to be appointed under s 383(2); at the date at which this volume states the law, no such day had been appointed and that amendment was not in force). As from the appointed day, the reference in the text to Her Majesty's forces is to such forces within the meaning of the Armed Forces Act 2006; until the appointed day, that reference is to Her Majesty's naval forces, military forces or air forces, within the meaning given by the Army Act 1955 s 225(1) (repealed with effect from 8 November 2008: see the Armed Forces Act 2006 ss 378(2), 382, Sch 17; and SI 2007/2123). See further **ARMED FORCES**.

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

332 Application of the Gambling Act 2005 to the Crown

NOTE 3--Appointed day for the commencement of the Armed Forces Act 2006 Sch 16 para 245 is 31 October 2009: SI 2009/1167.

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333. Excluded premises.

The Gambling Act 2005 has no effect in relation to anything done on, or in relation to any use of, premises¹:

- 925 (1) of a kind specified for these purposes by order of the Secretary of State²;
- 926 (2) certified for these purposes, on grounds relating to national security, by the Secretary of State or the Attorney General³.

1 As to the meaning of 'premises' see PARA 311 note 5.

2 Gambling Act 2005 s 348(1). As to the Secretary of State see PARA 2.

3 Gambling Act 2005 s 348(2).

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(3) REGULATION OF GAMBLING UNDER THE GAMBLING ACT 2005; IN GENERAL/(ii) Application of the Legislation/334. Territorial limitations.

334. Territorial limitations.

A person does not commit an offence under certain provisions of the Gambling Act 2005¹ if the conduct which would otherwise constitute the offence takes place:

- 927 (1) on board a vessel² and the vessel is on a journey which has taken it or is intended to take it into international waters³;
- 928 (2) on board an aircraft and at a time when the aircraft is in international airspace⁴.

Subject to head (1) above, a provision of the 2005 Act which applies in relation to a thing done in Great Britain applies to that thing if done on or in the territorial sea adjacent to Great Britain⁵.

¹ ie under the Gambling Act 2005 Pt 3 (ss 33-44) (general offences: see PARA 615 et seq), Pt 4 (ss 45-64) (protection of children and young persons: see PARA 621 et seq), Pt 10 (ss 235-251) (gaming machines: see PARA 547 et seq) or Pt 11 (ss 252-265) (lotteries: see PARA 643 et seq).

² As to the meaning of 'vessel' see PARA 311 note 5.

³ Gambling Act 2005 s 359(1). For these purposes, 'international waters' means waters outside the territorial sea adjacent to Great Britain; and 'the territorial sea' has the meaning given by the Territorial Sea Act 1987 s 1: Gambling Act 2005 s 359(3). The Territorial Sea Act 1987 s 1 extends the breadth of the territorial sea to 12 nautical miles, measured from its landward baselines. See also the Territorial Sea (Limits) Order 1989, SI 1989/482, which specifies the seaward limits of English jurisdiction in the English Channel. The landward baselines ordinarily follow the line of lowest astronomical tides, but this is not expressed in any legislation. As to the meaning of 'Great Britain' see PARA 16 note 8.

⁴ Gambling Act 2005 s 360(1). For these purposes, 'international airspace' means airspace other than airspace above Great Britain or above the territorial sea adjacent to Great Britain (within the meaning given by the Territorial Sea Act 1987 s 1): Gambling Act 2005 s 360(2).

⁵ Gambling Act 2005 s 359(2).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(iii) Functions, Powers and Duties of the Gambling Commission

335. Duty to promote the licensing objectives.

In exercising its functions under the Gambling Act 2005 the Gambling Commission¹ must aim to pursue, and wherever appropriate to have regard to, the licensing objectives². It must also aim to permit gambling³, in so far as the Commission thinks it reasonably consistent with pursuit of the licensing objectives⁴.

- 1 As to the Gambling Commission see PARA 4.
- 2 Gambling Act 2005 s 22(a). As to the licensing objectives see PARA 331.
- 3 As to the meaning of 'gambling' see PARA 308.
- 4 Gambling Act 2005 s 22(b).

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(3) REGULATION OF GAMBLING UNDER THE GAMBLING ACT 2005; IN GENERAL/(iii) Functions, Powers and Duties of the Gambling Commission/336. Statement of principles for licensing and regulation.

336. Statement of principles for licensing and regulation.

The Gambling Commission¹ must prepare a statement setting out the principles to be applied by it in exercising its functions under the Gambling Act 2005². The statement must, in particular, explain how the principles to be applied are expected to assist the Commission in its pursuit of the licensing objectives³.

The Commission must review the statement from time to time, and revise the statement when the Commission thinks it appropriate⁴. As soon as is reasonably practicable, the Commission must publish the statement and any revision⁵.

Before issuing or revising such a statement the Commission must consult:

- 929 (1) the Secretary of State⁶;
- 930 (2) the Commissioners for Revenue and Customs;
- 931 (3) one or more persons who appear to the Commission to represent local authorities⁷;
- 932 (4) one or more persons who appear to the Commission to represent chief constables of police forces⁸;
- 933 (5) one or more persons who appear to the Commission to represent the interests of persons carrying on gambling⁹ businesses;
- 934 (6) one or more persons who appear to the Commission to have knowledge about social problems relating to gambling; and
- 935 (7) to such extent and in such manner as the Commission thinks appropriate, members of the public¹⁰.

The statement must specify:

- 936 (a) the principles to be applied by the Commission in considering applications for operating licences¹¹ and personal licences¹²; and
- 937 (b) the Commission's practice in relation to the delegation of functions with regard to such applications, the holding of oral hearings of applications and evidence required or accepted in connection with such applications¹³.

The Commission must publish any determination to limit the duration of operating licences or personal licences¹⁴ or any determination as to the period for which a renewed operating licence or personal licence is to have effect¹⁵ as part of a statement or revised statement under the above provisions¹⁶.

The Commission's statement of principles under the above provisions was published in December 2006¹⁷.

1 As to the Gambling Commission see PARA 4.

2 Gambling Act 2005 s 23(1).

3 Gambling Act 2005 s 23(2). As to the licensing objectives see PARA 331.

4 Gambling Act 2005 s 23(3).

5 Gambling Act 2005 s 23(4).

6 As to the Secretary of State see PARA 2.

7 'Local authority' is not defined for these purposes. As to local authorities generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq; **LONDON GOVERNMENT**. As to the local authorities that are licensing authorities see PARA 3.

8 'Chief constables of police forces' has the same meaning in relation to England and Wales as in the Police Act 1996 (see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq): Gambling Act 2005 s 353(1).

9 As to the meaning of 'gambling' see PARA 308.

10 Gambling Act 2005 s 23(5) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

11 Ie applications under s 69: see PARA 353. As to the meaning of 'operating licence' see PARA 349 note 2.

12 See the Gambling Act 2005 ss 70(4), 128(1); and PARAS 355, 402. As to the meaning of 'personal licence' see PARA 400.

13 See the Gambling Act 2005 ss 73(4), 128(1); and PARAS 354, 402.

14 Ie any determination under the Gambling Act 2005 s 111(1) (applied to personal licences by s 128(1)): see PARAS 389, 402.

15 Ie any determination under the Gambling Act 2005 s 112(7) (applied to personal licences by s 128(1)): see PARAS 390, 402.

16 See the Gambling Act 2005 ss 111(4), 112(7)(c); and PARAS 389, 390.

17 See *Statement of Principles for Licensing and Regulation* (December 2006, Gambling Commission). That statement, which is the copyright of the Gambling Commission, is set out in the current edition of Paterson's Licensing Acts. The statement is also published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk.

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(3) REGULATION OF GAMBLING UNDER THE GAMBLING ACT 2005; IN GENERAL/(iii) Functions, Powers and Duties of the Gambling Commission/337. Publication of codes of practice.

337. Publication of codes of practice.

The Gambling Commission¹ must issue one or more codes of practice about the manner in which facilities for gambling² are provided, whether by the holder of a licence under the Gambling Act 2005³ or by another person⁴. In particular, a code must describe arrangements that should be made by a person providing facilities for gambling⁵ for the purposes of:

- 938 (1) ensuring that gambling is conducted in a fair and open way;
- 939 (2) protecting children⁶ and other vulnerable persons from being harmed or exploited by gambling; and
- 940 (3) making assistance available to persons who are or may be affected by problems related to gambling⁷;

and a code may include provision about how facilities for gambling are advertised or described⁸. The Commission may make different provision⁹ for different cases or circumstances, whether or not by way of separate codes of practice¹⁰.

A code may be revised or revoked by the Commission¹¹. A code, and any revision, must state when it comes into force¹².

Before issuing or revising a code under these provisions:

- 941 (a) the Commission must consult:
 - 41 56. (i) the Secretary of State¹³;
 - 57. (ii) the Commissioners for Revenue and Customs;
 - 58. (iii) one or more persons who appear to the Commission to represent the interests of persons who carry on gambling businesses and are likely to be affected by the code or revision;
 - 59. (iv) one or more persons who appear to the Commission to have knowledge about social problems relating to gambling; and
 - 60. (v) in the case of a code including provision about how facilities for gambling are advertised or described¹⁴, one or more persons who appear to the Commission to have a relevant responsibility for regulating the advertising industry¹⁵;
- 42 942 (b) the Commission must also consult, if and to the extent that the Commission thinks appropriate having regard to the nature of the code or revision:
 - 43 61. (i) one or more persons who appear to the Commission to represent local authorities¹⁶;
 - 62. (ii) one or more persons who appear to the Commission to represent chief constables of police forces¹⁷;
 - 63. (iii) one or more persons who appear to the Commission to represent the interests of persons carrying on gambling businesses, apart from those consulted under head (a)(iii) above; and
 - 64. (iv) in such manner as the Commission thinks appropriate, members of the public¹⁸.

The Commission must publish a code and any revision in a manner which the Commission thinks likely to bring it to the attention of those whose activities it concerns¹⁹.

A failure to comply with a provision of a code does not of itself make a person liable to criminal or civil proceedings; but this is subject to any statutory provision²⁰ making an exception to an offence dependent on compliance with a code²¹. A code is, however, admissible in evidence in criminal or civil proceedings²² and must be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant²³. A code must also be taken into account by the Commission in the exercise of a function under the Gambling Act 2005²⁴.

In exercising their functions with regard to premises licences²⁵, licensing authorities²⁶ must aim to permit the use of premises for gambling in so far as they may think fit, in accordance with any relevant code of practice under these provisions²⁷.

The Commission's principal code of practice for gambling operators came into force on 1 September 2007²⁸.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'gambling' see PARA 308.

3 As to such licences see PARA 349 et seq.

4 Gambling Act 2005 s 24(1).

5 As to the meaning of 'providing facilities for gambling' see PARA 309.

6 As to the meaning of 'child' see PARA 331 note 2.

7 Gambling Act 2005 s 24(2).

8 Gambling Act 2005 s 24(3).

9 Ie under the Gambling Act 2005 s 24.

10 Gambling Act 2005 s 24(7). The Commission must issue one or more codes of practice under s 24 about access to casino premises for children and young persons: see s 176; and PARA 508. See the *Code of Practice on Access to Casino Premises for Children and Young Persons*, contained in *Licence Conditions and Codes of Practice* Pt II (June 2007, Gambling Commission) which came into force on 1 September 2007. That code is set out in the current edition of Paterson's Licensing Acts. The code is also published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk. Revised *Licence Conditions and Codes of Practice* (October 2008, Gambling Commission) will come into force on 1 January 2009, and are accessible on the Commission's website.

11 Gambling Act 2005 s 24(4).

12 Gambling Act 2005 s 24(5).

13 As to the Secretary of State see PARA 2.

14 Ie in the case of a code including provision by virtue of the Gambling Act 2005 s 24(3): see the text and note 8.

15 Gambling Act 2005 s 24(10) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

16 'Local authority' is not defined for these purposes. As to local authorities generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq; **LONDON GOVERNMENT**. As to the local authorities that are licensing authorities see PARA 3.

17 As to the meaning of 'chief constables of police forces' see PARA 336 note 8.

- 18 Gambling Act 2005 s 24(11).
- 19 Gambling Act 2005 s 24(6).
- 20 Ie any provision of or by virtue of the Gambling Act 2005.
- 21 Gambling Act 2005 s 24(8).
- 22 Gambling Act 2005 s 24(9)(a).
- 23 Gambling Act 2005 s 24(9)(b). In determining an appeal the Gambling Appeals Tribunal must have regard to any relevant provision of a code of practice issued under s 24: see s 144(3); and PARA 448. As to the Gambling Appeals Tribunal see PARA 6.
- 24 Gambling Act 2005 s 24(9)(c).
- 25 Ie their functions under the Gambling Act 2005 Pt 8 (ss 150-215, Sch 9): see PARA 460 et seq. As to the meaning of 'premises licence' see PARA 460 note 1.
- 26 As to the licensing authorities see PARA 3.
- 27 See the Gambling Act 2005 s 153(1)(a); and PARA 464.
- 28 See the *Code of Practice for Gambling Operators*, contained in *Licence Conditions and Codes of Practice* Pt II (June 2007, Gambling Commission) which came into force on 1 September 2007. That code is set out in the current edition of Paterson's Licensing Acts. The code is also published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk. Revised *Licence Conditions and Codes of Practice* (October 2008, Gambling Commission) will come into force on 1 January 2009, and are accessible on the Commission's website.

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(3) REGULATION OF GAMBLING UNDER THE GAMBLING ACT 2005; IN GENERAL/(iii) Functions, Powers and Duties of the Gambling Commission/338. Guidance to local authorities.

338. Guidance to local authorities.

The Gambling Commission¹ must from time to time issue guidance as to the manner in which local authorities² are to exercise their functions under the Gambling Act 2005 and, in particular, the principles to be applied by local authorities in exercising functions under that Act³.

Before issuing such guidance:

- 943 (1) the Commission must consult:
 - 45 65. (a) the Secretary of State⁴,
 - 66. (b) the Commissioners for Revenue and Customs;
 - 67. (c) one or more persons who appear to the Commission to represent local authorities;
 - 68. (d) one or more persons who appear to the Commission to represent the interests of persons carrying on gambling⁵ businesses; and
 - 69. (e) one or more persons who appear to the Commission to have knowledge about social problems relating to gambling⁶;
- 46 944 (2) the Commission must also consult, if and to the extent that the Commission thinks appropriate having regard to the nature of the guidance:
 - 47 70. (a) one or more persons who appear to the Commission to represent chief constables of police forces⁷; and
 - 71. (b) in such manner as the Commission thinks appropriate, members of the public⁸.
- 48

The Commission must publish guidance so issued⁹ and a local authority must have regard to it¹⁰.

In June 2007 the Commission published the second edition of its guidance to local authorities under the above provisions¹¹.

1 As to the Gambling Commission see PARA 4.

2 For these purposes, 'local authority' means (1) in relation to England, a district council, a county council for a county in which there are no district councils, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple, and the Council of the Isles of Scilly; (2) in relation to Wales, a county council and a county borough council: Gambling Act 2005 s 25(6)(a), (b).

3 Gambling Act 2005 s 25(1).

4 As to the Secretary of State see PARA 2.

5 As to the meaning of 'gambling' see PARA 308.

6 Gambling Act 2005 s 25(4)(a), (b), (d)-(f) (s 25(4)(b) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

7 As to the meaning of 'chief constables of police forces' see PARA 336 note 8.

8 Gambling Act 2005 s 24(5).

9 Gambling Act 2005 s 24(3).

10 Gambling Act 2005 s 24(2). In exercising their functions under Pt 8 (ss 150-215, Sch 9) (premises licences: see PARA 460 et seq), licensing authorities must aim to permit the use of premises for gambling in so far as they think fit, in accordance with any relevant guidance under s 24: see s 153(1)(b); and PARA 464. In exercising their functions under Sch 10 (family entertainment centre gaming machine permits: see PARA 562 et seq) and Sch 14 (prize gaming permits: see PARA 592 et seq), licensing authorities must have regard to any relevant guidance under s 24: see Sch 10 para 7(3), Sch 14 para 8(3); and PARAS 564, 594. As to the local authorities which are licensing authorities for the purposes of the Gambling Act 2005 see PARA 3.

11 See *Guidance to Licensing Authorities* (2nd Edn) (June 2007 with subsequent revisions, Gambling Commission). That guidance is set out in the current edition of Paterson's Licensing Acts. The guidance is also published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk.

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(3) REGULATION OF GAMBLING UNDER THE GAMBLING ACT 2005; IN GENERAL/(iii) Functions, Powers and Duties of the Gambling Commission/339. Duty to advise the Secretary of State.

339. Duty to advise the Secretary of State.

The Gambling Commission¹ must give advice to the Secretary of State² about the incidence of gambling³, the manner in which gambling is carried on, the effects of gambling, and the regulation of gambling⁴. Such advice must be given in response to a request from the Secretary of State, and on such other occasions as the Commission thinks appropriate⁵.

- 1 As to the Gambling Commission see PARA 4.
- 2 As to the Secretary of State see PARA 2.
- 3 As to the meaning of 'gambling' see PARA 308.
- 4 Gambling Act 2005 s 26(1).
- 5 Gambling Act 2005 s 26(2).

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(3) REGULATION OF GAMBLING UNDER THE GAMBLING ACT 2005; IN GENERAL/(iii) Functions, Powers and Duties of the Gambling Commission/340. Compliance assessment and investigation and prosecution of offences.

340. Compliance assessment and investigation and prosecution of offences.

The Gambling Commission¹ may undertake activities for the purpose of assessing compliance with provision made by or by virtue of the Gambling Act 2005, and whether an offence is being committed under or by virtue of that Act².

The Commission may also investigate whether an offence has been committed under the 2005 Act³, and may institute criminal proceedings in respect of an offence under that Act⁴.

1 As to the Gambling Commission see PARA 4.

2 Gambling Act 2005 s 27. As to offences see PARA 615 et seq.

3 This power may be exercised whether in response to information received by the Commission or otherwise: Gambling Act 2005 s 28(2).

4 Gambling Act 2005 s 28(1).

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(3) REGULATION OF GAMBLING UNDER THE GAMBLING ACT 2005; IN GENERAL/(iii) Functions, Powers and Duties of the Gambling Commission/341. Consultation with National Lottery Commission and Commissioners for Revenue and Customs.

341. Consultation with National Lottery Commission and Commissioners for Revenue and Customs.

If in the course of the exercise of its functions the Gambling Commission¹ becomes aware of a matter about which the National Lottery Commission² or the Commissioners for Revenue and Customs is or are likely to have an opinion, the Gambling Commission must consult the National Lottery Commission³ or, as the case may be, the Commissioners for Revenue and Customs⁴.

The Gambling Commission must comply with any direction of the Secretary of State⁵, which may be general or specific, to consult the National Lottery Commission⁶ or the Commissioners for Revenue and Customs⁷.

1 As to the Gambling Commission see PARA 4.

2 As to the National Lottery Commission see PARA 7.

3 See the Gambling Act 2005 s 31(1).

4 See the Gambling Act 2005 s 32(1) (s 32 amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

5 As to the Secretary of State see PARA 2.

6 See the Gambling Act 2005 s 31(2).

7 See the Gambling Act 2005 s 32(2) (as amended: see note 4).

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(3) REGULATION OF GAMBLING UNDER THE GAMBLING ACT 2005; IN GENERAL/(iii) Functions, Powers and Duties of the Gambling Commission/342. Exchange of information.

342. Exchange of information.

The Gambling Commission¹ may require a licensing authority² to provide information that:

- 945 (1) forms part of a register maintained by the authority under the Gambling Act 2005³; or
- 946 (2) is in the possession of the authority in connection with a provision of that Act⁴,

and such a requirement may include a requirement for information to be compiled or collated in a specified manner or provided in a specified form⁵. A licensing authority must comply with such a requirement⁶.

The Commission may provide information received by it in the exercise of its functions to any of certain specified persons or bodies⁷ for use in the exercise of the person's or body's functions⁸ or for the purpose of a function of the Commission⁹; and any of a more restricted list of specified persons or bodies¹⁰ may provide to the Commission, for use in the exercise of its functions, information received by the person or body in the exercise of his or its functions¹¹. The Commission may also provide information received by it in the exercise of its functions:

- 947 (a) to the Comptroller and Auditor General for use in the exercise of his functions¹² under Part II of the National Audit Act 1983¹³;
- 948 (b) to a person if the provision is for the purpose of a criminal investigation or criminal proceedings, whether in the United Kingdom¹⁴ or elsewhere¹⁵.

Provision of information in reliance on these provisions¹⁶ may be subject to conditions, whether as to use, storage, disposal or otherwise¹⁷.

Nothing in the Gambling Act 2005, however, authorises a disclosure which contravenes the Data Protection Act 1998¹⁸.

1 As to the Gambling Commission see PARA 4.

2 As to the licensing authorities see PARA 3.

3 As to registers see PARA 469 (register of premises licences); PARA 539 (register of temporary use notices); PARAS 569, 577 (registers of gaming machine permits); PARA 591 (register of club gaming and club machine permits); PARA 599 (register of prize gaming permits).

4 Gambling Act 2005 s 29(1). See further *Information Exchange between the Gambling Commission and Licensing Authorities* (March 2007, Gambling Commission) set out in Paterson's Licensing Acts (116th Edn, 2008) at para 3.2640. See also *Guidance to Licensing Authorities* (2nd Edn) (June 2007 with subsequent revisions, Gambling Commission) Pt 13 *Information Exchange*. That guidance is set out in the current edition of Paterson's Licensing Acts. That document and guidance is also published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk.

5 Gambling Act 2005 s 29(2).

6 Gambling Act 2005 s 29(3).

7 le the persons or bodies listed in the Gambling Act 2005 Sch 6. Those persons or bodies are as follows:

- 92 (1) persons and bodies with functions under the Gambling Act 2005, ie: a constable or police force; an enforcement officer; a licensing authority; the Commissioners for Revenue and Customs; the Gambling Appeals Tribunal; the National Lottery Commission; the Secretary of State; and the Scottish Ministers (Sch 6 Pt 1 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)));
- 93 (2) enforcement and regulatory bodies, ie: the Charity Commission; the Financial Services Authority; the Horserace Betting Levy Board; the Occupational Pensions Regulatory Authority; the Office of Fair Trading; the Serious Fraud Office; and the Serious Organised Crime Agency (Gambling Act 2005 Sch 6 Pt 2 (amended by the Serious Crime Act 2007 Sch 8 Pt 7 para 176, Sch 14; and by SI 2007/2101));
- 94 (3) sport governing bodies, ie: the British Boxing Board of Control Limited; the England and Wales Cricket Board Limited; the Football Association Limited; the Football Association of Wales Limited; the Horseracing Regulatory Authority; the Lawn Tennis Association; the Irish Football Association Limited; the Jockey Club; the National Greyhound Racing Club Limited; the Professional Golfers' Association Limited; the Rugby Football League; the Rugby Football Union; the Scottish Rugby Union; the Scottish Football Association Limited; UK Athletics Limited; and the Welsh Rugby Union Limited (Gambling Act 2005 Sch 6 Pt 3 (amended by SI 2007/2101)).

'Enforcement officer' means a person designated or appointed as an enforcement officer under the Gambling Act 2005 s 303 (see PARA 600): s 353(1). As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq; as to the Gambling Appeals Tribunal see PARA 4; as to the National Lottery Commission see PARA 7; as to the Secretary of State see PARA 2; and as to the Horserace Betting Levy Board see PARA 12.

The Secretary of State may by order amend Sch 6 so as to add an entry to a list (in Sch 6 Pt 1, 2 or 3), remove an entry from a list (in Sch 6 Pt 1, 2 or 3), move an entry from one list to another or add, remove or vary a note in Sch 6 Pt 4 (see notes 9, 11): s 351(1). In particular, a note relating to an entry for a person or body situated outside the United Kingdom may provide that the entry has effect only in relation to the law of a part of the United Kingdom: s 351(2). An entry added to a list in Sch 6 may specify a person or body or a class or description of persons or bodies: s 351(3). The power to add, remove or vary a note may be exercised generally or in relation to a specified person or body or class or description of persons or bodies: s 351(4). As to the exercise of this power see the Gambling Act 2005 (Amendment of Schedule 6) Order 2007, SI 2007/2101, art 2; and heads (2)-(3) above. As to the meaning of 'United Kingdom' see PARA 16 note 8.

8 The Commission may charge a fee for the provision of information for such use: see the Gambling Act 2005 s 30(7).

9 Gambling Act 2005 s 30(1). Where a person or body listed in Sch 6 is by virtue of an enactment restricted in the use that may be made of information provided to him or it by another person or body, nothing in s 30 (see the text and notes 8-18) or in s 350 (see PARA 347) overrides that restriction in relation to information provided to the person or body by the Commission, or so as to permit the person or body to disclose to the Commission information provided to the person or body by another: Sch 6 Pt 4 note 1.

10 le the persons or bodies listed in the Gambling Act 2005 Sch 6 Pt 1 or Pt 2: see note 7 heads (1)-(2).

11 Gambling Act 2005 s 30(2). Where by virtue of an enactment the use that may be made of information supplied by a person or body listed in Sch 6 is restricted, or where the information may be further disclosed only with the consent of the person or body which provided the information, the prohibition or restriction on further disclosure applies to the supply of information by virtue of the Gambling Act 2005 and to the supply of information to the Gambling Commission, whether or not by virtue of that Act: Sch 6 Pt 4 note 2. Information provided to a person or body by the Commissioners for Revenue and Customs in reliance on a provision of the 2005 Act may not be provided by that person or body to any other person or body without the consent of the Commissioners: Sch 6 Pt 4 note 3 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

12 le his functions under the National Audit Act 1983 Pt II (ss 6-9). As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

13 Gambling Act 2005 s 30(3). Schedule 6 Pt 4 note 2 (see note 11) does not apply to the provision of information under s 30(3): s 30(5).

14 As to the meaning of 'United Kingdom' see PARA 16 note 8.

15 Gambling Act 2005 s 30(5).

- 16 le in reliance on the Gambling Act 2005 s 30: see the text and notes 7-15.
- 17 Gambling Act 2005 s 30(6).
- 18 Gambling Act 2005 s 352. Section 30 is specifically expressed to be subject to s 352: see s 30(8).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(3) REGULATION OF GAMBLING UNDER THE GAMBLING ACT 2005; IN GENERAL/(iii) Functions, Powers and Duties of the Gambling Commission/343. Licensing functions of the Gambling Commission and miscellaneous powers.

343. Licensing functions of the Gambling Commission and miscellaneous powers.

The Gambling Commission¹ issues operating licences² and personal licences³ under the Gambling Act 2005 and regulates the holders of such licences⁴.

The Commission has other powers, functions and duties under the 2005 Act, for example the power to void bets⁵.

1 As to the Gambling Commission see PARA 4; and as to its main powers, functions and duties under the Gambling Act 2005 see PARAS 335-342. The powers and duties of the Commission in the context of its licensing functions are discussed below in the contexts in which they arise.

2 As to operating licences see PARA 349 et seq.

3 As to personal licences see PARA 400 et seq.

4 See PARA 428 et seq.

5 See the Gambling Act 2005 ss 336-338; and PARAS 328-329.

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(3) REGULATION OF GAMBLING UNDER THE GAMBLING ACT 2005; IN GENERAL/(iv) Functions, Powers and Duties of Licensing Authorities; In general/344. Three-year licensing policy.

(iv) Functions, Powers and Duties of Licensing Authorities; In general

344. Three-year licensing policy.

A licensing authority¹ must before each successive period of three years² prepare a statement of the principles that it proposes to apply in exercising its functions under the Gambling Act 2005 during that period, and must publish the statement³. A licensing authority must review its statement under these provisions from time to time⁴. If the authority thinks it necessary in the light of a review, it must revise the statement⁵ and publish any revision before giving it effect⁶.

In preparing a statement or revision under these provisions a licensing authority must consult:

- 949 (1) the chief officer of police for the authority's area;
- 950 (2) one or more persons who appear to the authority to represent the interests of persons carrying on gambling⁷ businesses in the authority's area; and
- 951 (3) one or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under the 2005 Act⁸.

The Secretary of State may make regulations about the form of statements under these provisions, the procedure to be followed in relation to the preparation, review or revision of such statements and the publication of such statements⁹. The statement or revision must include an introductory section at or near the beginning, summarising the matters dealt with in the statement¹⁰. The introductory section of the statement must also include a description of the geographical area in respect of which the authority exercises functions under the Gambling Act 2005¹¹; and the introductory section of the statement or the revision must include a list of the persons whom the authority has consulted in preparing it¹². The following matters must each be set out in a separate section within the statement:

- 952 (a) the principles to be applied by the authority in exercising the powers¹³ to designate, in writing, a body which is competent to advise the authority about the protection of children¹⁴ from harm;
- 953 (b) the principles to be applied by the authority in exercising the powers¹⁵ to determine whether a person is an interested party in relation to a premises licence¹⁶, or an application for or in respect of a premises licence;
- 954 (c) the principles to be applied by the authority in exercising the functions¹⁷ with respect to the exchange of information between it and the Gambling Commission¹⁸, and the functions¹⁹ with respect to the exchange of information between it and other specified persons²⁰;
- 955 (d) the principles to be applied by the authority in exercising the functions²¹ with respect to the inspection of premises and the powers²² to institute criminal proceedings in respect of specified²³ offences²⁴.

In so far as a revision deals with any of the matters referred to in heads (a) to (d) above, the form of the revision must be in accordance with those heads²⁵. Subject to the above provisions²⁶, the form of the statement or any revision is to be for the authority to determine²⁷.

The function of preparing such a statement is not²⁸ delegated to the licensing committee²⁹ of the authority and may not be delegated by the authority³⁰.

1 As to the licensing authorities see PARA 3.

2 The Secretary of State was to appoint by order a day as the first day of the first period of three years for these purpose: see the Gambling Act 2005 s 349(6). The day so appointed is 31 January 2007: see the Gambling Act 2005 (Licensing Authority Policy Statement) (First Appointed Day) Order 2006, SI 2006/637, art 2. As to the Secretary of State see PARA 2.

3 Gambling Act 2005 s 349(1). In the Gambling Act 2005, except where the context otherwise requires, a reference to publication includes a reference to display: s 353(2)(j). Where a licensing authority is specified in an order under s 175 (see PARA 506) it must ensure that its statement under s 349 includes the principles that it proposes to apply in making determinations under Sch 9 para 5 (see PARA 507): s 349(7).

Before a statement or revision (as to which see the text and notes 5-6) comes into effect, the authority that prepared it must (1) publish the statement or revision in accordance with the Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006, SI 2006/636, reg 7(2); and (2) advertise the publication of the statement or revision by publishing a notice in accordance with reg 7(3), (4): reg 7(1). The statement or revision must be published by being made available for a period of at least four weeks before the date on which it will come into effect (a) on the authority's internet website; and (b) for inspection by the public at reasonable times in one or both of the following places: (i) one or more public libraries situated in the area covered by the statement or revision; (ii) other premises situated in that area: reg 7(2). The notice referred to in reg 7(1)(b) (see head (2) above) must specify: (A) the date on which the statement or revision will be published; (B) the date on which the statement or revision will come into effect; (c) the internet address where the statement or revision will be published in accordance with reg 7(2)(a) (see head (a) above; and (D) the address of the library or other premises at which the statement or revision may be inspected in accordance with reg 7(2)(b) (see head (b) above): reg 7(3). That notice must be published no later than the first day on which the statement or revision is published in accordance with reg 7(2) on the authority's internet website, and in or on one or more of the following places: (aa) a local newspaper circulating in the area covered by the statement; (bb) a local newsletter, circular, or similar document circulating in the area covered by the statement; (cc) a public notice board in or near the principal office of the authority; (dd) a public notice board on the premises of public libraries in the area covered by the statement: reg 7(4).

4 Gambling Act 2005 s 349(2)(a).

5 Gambling Act 2005 s 349(2)(b).

6 Gambling Act 2005 s 349(2)(c).

7 As to the meaning of 'gambling' see PARA 308.

8 Gambling Act 2005 s 349(3).

9 Gambling Act 2005 s 349(4).

10 Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006, SI 2006/636, regs 4(1), 6(1).

11 Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006, SI 2006/636, reg 4(2)(a). The authority may satisfy the requirement in as to description by including a plan of the area to which the statement applies: reg 4(3).

12 Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006, SI 2006/636, regs 4(2)(b), 6(2).

13 Ie under the Gambling Act 2005 s 157(h): see PARA 472 note 5.

14 As to the meaning of 'child' see PARA 331 note 2.

15 Ie under the Gambling Act 2005 s 158: see PARA 473 note 3.

16 As to the meaning of 'premises licence' see PARA 460 note 1.

17 Ie under the Gambling Act 2005 ss 29, 30: see PARA 342.

18 As to the Gambling Commission see PARA 4.

- 19 Ie under the Gambling Act 2005 s 350: see PARA 347.
- 20 Ie the other persons listed in the Gambling Act 2005 Sch 6. As to those persons see PARA 342 note 7.
- 21 Ie under the Gambling Act 2005 Pt 15 (ss 303-326): see PARA 600 et seq.
- 22 Ie under the Gambling Act 2005 s 346: see PARA 345.
- 23 Ie the offences specified in the Gambling Act 2005 s 346: see PARA 345.
- 24 Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006, SI 2006/636, reg 5.
- 25 Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006, SI 2006/636, reg 6(3).
- 26 Ie subject to the Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006, SI 2006/636, regs 4-6: see the text and notes 10-25.
- 27 Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006, SI 2006/636, reg 3.
- 28 Ie by virtue of the Gambling Act 2005 s 154(1): see PARA 466.
- 29 Ie the licensing committee established under the Licensing Act 2003 s 6: see PARA 40.
- 30 Gambling Act 2005 s 154(2)(c).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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345. Power to institute criminal proceedings.

Without prejudice to the power to prosecute or defend legal proceedings which is conferred on local authorities by the Local Government Act 1972¹, a licensing authority² may institute criminal proceedings in respect of an offence under any of certain specified provisions³ of the Gambling Act 2005⁴.

1 See the Local Government Act 1972 s 222; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 573.

2 As to the licensing authorities see PARA 3.

3 The specified provisions are: (1) the Gambling Act 2005 s 37 (use of premises: see PARA 616); (2) ss 185, 186 (premises licences: see PARAS 517-518); (3) s 229 (temporary use notices: see PARA 540); (4) s 242 (gaming machines: see PARA 638); (5) ss 258-262 (lotteries: see PARAS 643-646); (6) s 326 (obstruction of persons exercising powers of entry etc: see PARA 681); (7) s 342 (giving false information: see PARA 637); (8) Sch 10 para 20 (family entertainment centre gaming machine permits: see PARA 566); (9) Sch 13 para 10 (licensed premises gaming machine permits: see PARA 574); and (10) Sch 14 para 20 (prize gaming permits: see PARA 596): see s 346(1)(a)-(o).

4 Gambling Act 2005 s 346(1), (2).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(3) REGULATION OF GAMBLING UNDER THE GAMBLING ACT 2005; IN GENERAL/(iv) Functions, Powers and Duties of Licensing Authorities; In general/346. Licensing functions and miscellaneous powers.

346. Licensing functions and miscellaneous powers.

In contrast to the arrangements under the Licensing Act 2003, where licensing is in the hands of the local licensing authorities¹, those authorities have more limited powers under the Gambling Act 2005². Operating licences³ and personal licences⁴ are issued by the Gambling Commission⁵, which regulates the holders of such licences⁶, while premises licences⁷ and the various types of permit under that Act⁸ are issued by licensing authorities. Local licensing authorities are also responsible for either endorsing temporary use notices or giving counter-notices in respect of such notices⁹.

The miscellaneous powers, functions and duties of licensing authorities under the 2005 Act are considered below in the contexts in which they arise.

1 As to the licensing authorities see PARA 3; and as to their functions, powers and duties under the Licensing Act 2003 see PARA 35 et seq.

2 As to the general functions, powers and duties of licensing authorities under the Gambling Act 2005 see PARAS 344-345.

3 As to operating licences see PARA 349 et seq.

4 As to personal licences see PARA 400 et seq.

5 As to the Gambling Commission see PARA 4; and as to its main powers, functions and duties under the Gambling Act 2005 see PARAS 335-342.

6 See PARA 428 et seq.

7 As to premises licences see PARA 460 et seq.

8 As to gaming machine permits see PARA 562 et seq; as to club gaming permits and club machine permits see PARA 578 et seq; and as to prize gaming permits see PARA 592 et seq.

9 As to temporary use notices see PARA 534 et seq.

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(3) REGULATION OF GAMBLING UNDER THE GAMBLING ACT 2005; IN GENERAL/(v) Exchange and Disclosure of Information/347. Exchange of information between persons and bodies with functions under the Gambling Act 2005.

(v) Exchange and Disclosure of Information

347. Exchange of information between persons and bodies with functions under the Gambling Act 2005.

A person or body with functions under the Gambling Act 2005 who is specified for these purposes¹ may provide information to any other person or body so specified for use in the exercise of a function under that Act². Such a person or body may also provide information obtained in the course of the exercise of a function under that Act to the Commissioners for Revenue and Customs for use in the exercise of any function³.

Provision of information in reliance on these provisions may be subject to conditions, whether as to use, storage, disposal or otherwise⁴. Nothing in the Gambling Act 2005 authorises a disclosure which contravenes the Data Protection Act 1998⁵.

1 I.e. a person or body listed in the Gambling Act 2005 Sch 6 Pt 1: see PARA 342 note 7 head (1).

2 Gambling Act 2005 s 350(1). See also Sch 6 Pt 4 notes 1, 2; and PARA 342 notes 9, 11.

3 Gambling Act 2005 s 350(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

4 Gambling Act 2005 s 350(3).

5 Gambling Act 2005 s 352.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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348. Wrongful disclosure.

Where the Commissioners for Revenue and Customs provide information to a person¹ under the Gambling Act 2005, the provisions of the Commissioners for Revenue and Customs Act 2005 relating to wrongful disclosure² apply to the disclosure of the information by the person³ as they apply to the disclosure of information in contravention of a provision of that Act⁴. They do not, however, apply to disclosure in accordance with the Gambling Act 2005, in accordance with another enactment, or in specified⁵ circumstances⁶.

In so far as the above-mentioned provisions relating to wrongful disclosure so apply, they are to be treated⁷ as an offence which may be investigated, and for which criminal proceedings may be instituted, by the Gambling Commission⁸.

1 For these purposes, information provided to a person is to be treated as being provided both to him and to any person on whose behalf he acts or by whom he is employed: Gambling Act 2005 s 352A(3)(a) (s 352A added by the Finance Act 2006 s 177).

2 I.e. the Commissioners for Revenue and Customs Act 2005 s 19: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 920.

3 For these purposes, the reference to disclosure by the person to whom information was provided includes a reference to disclosure by any person acting on behalf of, or employed by, the person to whom the information was provided (or a person to whom it is treated as being provided by virtue of the Gambling Act 2005 s 352A(3)(a): see note 1): s 352A(3)(b) (as added: see note 1).

4 Gambling Act 2005 s 352A(1) (as added: see note 1). In the application of the Commissioners for Revenue and Customs Act 2005 s 19 by virtue of the Gambling Act 2005 s 352A(1), 'revenue and customs information' means information provided by the Commissioners (but subject to the express exclusion in the Commissioners for Revenue and Customs Act 2005 s 19(2)): Gambling Act 2005 s 352A(5) (as so added).

5 I.e. in circumstances specified in the Commissioners for Revenue and Customs Act 2005 s 18(2)(c), (d), (e) or (h): see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 919.

6 Gambling Act 2005 s 352A(2) (as added: see note 1). In the application of the Commissioners for Revenue and Customs Act 2005 s 18(2)(c), (d) by virtue of the Gambling Act 2005 s 352A(2)(c) (see note 5), a reference to functions of the Revenue and Customs is to be taken as a reference to functions of the person making the disclosure: s 352A(4) (as so added).

7 I.e. for the purposes of the Gambling Act 2005 s 28: see PARA 340.

8 See the Gambling Act 2005 s 352A(6) (as added: see note 1). As to the Gambling Commission see PARA 4.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue)
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(4) OPERATING LICENCES AND PERSONAL LICENCES

(i) Operating Licences

A. NATURE AND FORM OF LICENCES

349. Nature of operating licence.

The Gambling Commission¹ may issue operating licences² in accordance with the provisions of Part 5³ of the Gambling Act 2005⁴. An operating licence is a licence which states that it authorises the licensee⁵:

- 956 (1) to operate a casino⁶ (a 'casino operating licence');
- 957 (2) to provide facilities⁷ for playing bingo⁸ (a 'bingo operating licence');
- 958 (3) to provide facilities for betting⁹ other than pool betting¹⁰ (a 'general betting operating licence');
- 959 (4) to provide facilities for pool betting (a 'pool betting operating licence');
- 960 (5) to act as a betting intermediary¹¹ (a 'betting intermediary operating licence')¹²;
- 961 (6) to make gaming machines¹³ available for use in an adult gaming centre¹⁴ (a 'gaming machine general operating licence' for an adult gaming centre);
- 962 (7) to make gaming machines available for use in a family entertainment centre¹⁵ (a 'gaming machine general operating licence' for a family entertainment centre);
- 963 (8) to manufacture, supply, install, adapt, maintain or repair a gaming machine, or a part of a gaming machine (a 'gaming machine technical operating licence')¹⁶;
- 964 (9) to manufacture, supply¹⁷, install or adapt gambling software¹⁸ (a 'gambling software operating licence')¹⁹; or
- 965 (10) to promote a lottery²⁰ (a 'lottery operating licence')²¹.

The issue of an operating licence does not affect the requirement²² for a premises licence²³.

If, once the Horserace Totalisator Board ('the Tote') has been dissolved²⁴, the Commission issues the exclusive licence to the successor company²⁵, the Commission must, if it has not already done so, issue a remote and a non-remote pool betting operating licence to the successor company which will have the effect of authorising the activities which the exclusive licence grants the successor company the right to perform²⁶. If the successor company holds a remote or a non-remote operating licence when the exclusive licence is issued, the Commission must, if necessary, vary the licence so that it will have the effect of authorising those activities²⁷.

It is generally an offence to provide facilities for gambling without an operating licence²⁸.

1 As to the Gambling Commission see PARA 4.

2 'Operating licence' means a licence issued under the Gambling Act 2005 Pt 5: s 353(1).

3 ie under the Gambling Act 2005 Pt 5 (ss 65-126): see the text and notes 3-20; and PARA 350 et seq.

4 Gambling Act 2005 s 65(1).

5 'Licensee', in relation to an operating licence, means the person to whom the licence is issued: Gambling Act 2005 s 126(1). A reference in the Gambling Act 2005 to an act which is authorised by a licence or other document does not include a reference to an act which would be authorised by the licence or document but for failure to comply with a term or condition: s 353(5).

6 As to the meaning of 'casino' see PARA 311.

7 As to the meaning of 'providing facilities' for gambling see PARA 309.

8 'Bingo' means any version of that game, irrespective of by what name it is described: Gambling Act 2005 s 353(1).

9 As to the meaning of 'betting' see PARA 312.

10 As to the meaning of 'pool betting' see PARA 313.

11 As to the meaning of 'betting intermediary', and as to when a person acts as a betting intermediary, see PARA 315.

12 With effect from 1 August 2008, the Gambling Commission has introduced a new remote betting intermediary (trading rooms only) licence. Such a licence is a 'betting intermediary (trading room only) operating licence', which means a betting intermediary operating licence (as defined in the Gambling Act 2005 s 65(2)(e): see head (5) in the text), which does not authorise the holder ('H') to act as a betting intermediary except where (1) any betting facilitated by a service provided by H pursuant to the licence is carried out only (a) by persons physically present on the premises from which H is providing the service; (b) by means of remote communication; and (c) through intermediaries other than H; and (2) H is not a party to any bet made or accepted by the persons referred to in head (1)(a) above: see the Gambling (Operating Licence and Single-Machine Permit Fees) (Amendment) Regulations 2006, SI 2006/3284, reg 2 (definition added by SI 2008/1803). As to remote operating licences see generally PARA 351; and as to the meaning of 'remote communication' see PARA 308.

13 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547.

14 In the Gambling Act 2005, 'adult gaming centre' means premises in respect of which an adult gaming centre premises licence is in force: Gambling Act 2005 ss 237, 353(1). As to the meaning of 'adult gaming centre premises licence' see PARA 460 at head (3).

15 In the Gambling Act 2005, 'family entertainment centre' means premises, other than an adult gaming centre, wholly or mainly used for making gaming machines available for use: ss 238, 353(1). As to the meaning of 'gaming machine' see PARA 547.

16 With effect from 1 August 2008, the Gambling Commission has introduced two new types of gaming machine technical operating licence: a linked non-remote gaming machine technical (supplier) licence and a linked remote gaming machine technical (supplier) licence. Such a licence is a 'supplementary gaming machine technical operating licence', which means a gaming machine technical operating licence (as defined in the Gambling Act 2005 s 65(2)(h): see head (8) in the text) which does not (1) authorise the holder of the licence ('H') to (a) manufacture a gaming machine (or part of such a machine); or (b) supply, install, adapt, maintain or repair a gaming machine (or part of such a machine) except where H is the only person who makes the machine available for use; or (2) authorise H to incur, for the purpose of carrying out activities authorised by the licence, costs of more than £50,000 during the period of one year commencing on the day after the day on which the licence is granted, or in any subsequent one year period: see the Gambling (Operating Licence and Single-Machine Permit Fees) (Amendment) Regulations 2006, SI 2006/3284, reg 2 (definition added by SI 2008/1803). The Commission has indicated in an explanatory leaflet to accompany this change that such a licence would be of interest to, eg, an adult gaming centre operator wishing to maintain, repair or adapt the machines in its arcades, or to install or adapt the software in machines in its arcades by means of remote communication. That explanatory leaflet is published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk.

17 'Supply' includes (1) sale; (2) lease; and (3) placing on premises with permission or in accordance with a contract or other arrangement: Gambling Act 2005 s 353(1).

18 In the Gambling Act 2005, 'gambling software' means computer software for use in connection with remote gambling, but does not include anything for use solely in connection with a gaming machine: Gambling Act 2005 ss 41(2), 353(1). Except where the context otherwise requires, a reference to installing computer

software includes a reference to downloading computer software: s 353(2)(d). As to the meaning of 'remote gambling' see PARA 308.

19 With effect from 1 August 2008, the Gambling Commission has introduced two new types of gambling software operating licence, a linked non-remote gambling software licence and a linked remote gambling software licence. Such a licence is a 'supplementary gambling software operating licence' (as defined in the Gambling Act 2005 s 65(2)(i) (see head (9) in the text), which means a gambling software operating licence which does not authorise the holder of the licence ('H') (1) to manufacture, supply, install or adapt gambling software other than software for use in connection with gambling facilities provided by H; or (2) to incur, for the purpose of carrying out activities authorised by the licence, costs of more than £50,000 during the period of one year commencing on the day after the day on which the licence is granted, or in any subsequent one year period: see the Gambling (Operating Licence and Single-Machine Permit Fees) (Amendment) Regulations 2006, SI 2006/3284, reg 2 (definition added by SI 2008/1803). The Commission has indicated in an explanatory leaflet to accompany this change that such a licence would be of interest to, eg, a casino which wished to install or adapt software used in its automated roulette equipment, or to do so by means of remote communication. As to that explanatory leaflet see note 16.

20 As to the meaning of 'lottery' see PARA 317. Except where the context otherwise requires, a reference to promoting a lottery is to be construed in accordance with the Gambling Act 2005 s 252 (see PARA 643): s 353(2) (h).

21 Gambling Act 2005 s 65(2). The Secretary of State may by order amend s 65(2) so as to add a kind of operating licence, remove a kind of operating licence, or vary a kind of operating licence: s 65(4). Such an order may, in particular, make consequential amendment of Pt 5 (or a provision of the 2005 Act or another enactment that relates to Pt 5): s 65(5). At the date at which this volume states the law, no such order had been made.

22 Ie it does not affect the operation of the Gambling Act 2005 s 37 (see PARA 616): s 65(3).

23 See the Gambling Act 2005 s 65(3).

24 Ie at any time after the coming into force of the Horserace Betting and Olympic Lottery Act 2004 Pt 1 (ss 1-14) (not fully in force): see PARAS 9-10.

25 Ie under the Horserace Betting and Olympic Lottery Act 2004 s 8 (not yet in force): see PARA 10.

26 See the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 8(4), (5) (art 8 added by SI 2007/2169). An operating licence issued in accordance with the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 8(5) must provide for the Gambling Act 2005 s 94 (see PARA 373) to apply to the licence: Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 8(6) (as so added). Article 8(5) applies whether or not the successor company is applying under the Gambling Act 2005 s 69 (see PARA 353) for a remote or a non-remote pool betting operating licence when the exclusive licence is issued: Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 8(7) (as so added). As to remote operating licences see PARA 351.

27 Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 8(8) (a) (as added see note 23). The Commission must also vary the licence so that it will provide for the Gambling Act 2005 s 94 to apply to the licence: Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 8(8)(b) (as so added). The Gambling Act 2005 s 104(6) (see PARA 386) applies to the variation of the operating licence under the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 8(8) as it applies to the variation of an operating licence on an application being made under the Gambling Act 2005 s 104: Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 8(9) (as so added).

28 See the Gambling Act 2005 s 33; and PARA 615.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(i) Operating Licences/A. NATURE AND FORM OF LICENCES/350. Combined licences.

350. Combined licences.

Subject to the following provisions, an operating licence¹ may be a licence of more than one of the kinds described² in the previous paragraph³.

A casino operating licence⁴ authorises the holder⁵, by virtue of this provision, to provide facilities⁶:

- 966 (1) for betting⁷ on the outcome of a virtual game, race, competition or other event or process⁸, subject to any exclusion or restriction provided for⁹ by way of condition¹⁰;
- 967 (2) for any game of chance¹¹ other than bingo¹²; and this does not prevent the combination¹³ of a casino operating licence and a bingo operating licence¹⁴.

A general betting operating licence¹⁵ authorises the holder, by virtue of this provision, to provide facilities for betting on the outcome of a virtual race, competition or other event or process other than a game of chance, subject to any exclusion or restriction provided for¹⁶ by way of condition¹⁷.

The following kinds of operating licence authorise the holder, by virtue of this provision, to make one or more gaming machines¹⁸ within Categories A to D¹⁹ available for use, in addition to authorising the specified activities²⁰:

- 968 (a) a non-remote casino operating licence;
- 969 (b) a non-remote bingo operating licence;
- 970 (c) a non-remote general betting operating licence; and
- 971 (d) a non-remote pool betting operating licence²¹.

No other kind of operating licence, other than a gaming machine general operating licence²², may authorise the holder to make a gaming machine available for use²³.

1 As to the meaning of 'operating licence' see PARA 349 note 2.

2 Ie described in the Gambling Act 2005 s 65(2): see PARA 349 at heads (1)-(10).

3 Gambling Act 2005 s 68(1), (2).

4 As to the meaning of 'casino operating licence' see PARA 349 at head (1).

5 'Holder', in relation to an operating licence, means the person to whom the licence is issued: Gambling Act 2005 s 126(1).

6 As to the meaning of 'providing facilities' for gambling see PARA 309.

7 As to the meaning of 'betting' see PARA 312.

8 For the purposes of the Gambling Act 2005, a reference to a virtual game, race or other event or process is a reference to (1) images generated by computer so as to resemble all or part of a game, race or other event or process of a kind that is played by or involves actual people, animals or things; (2) images generated by

computer so as to represent an imaginary game, race or other event or process; or (3) any game, race or other event or process the result of which is determined by computer: s 353(3).

9 le provided for by way of condition under the Gambling Act 2005 s 75 or s 77: see PARA 357.

10 Gambling Act 2005 s 68(3)(a).

11 As to the meaning of 'game of chance' see PARA 310. Non-remote casino operating licensees must only offer or permit to be played casino games that appear on the *List of Approved Casino Games* (July 2008, Gambling Commission), with the exception of any Commission-approved trial of a proposed new game. The Commission has also published a corresponding document, *Rules of Casino Games in Great Britain* (July 2008, Gambling Commission), which sets out the rules of those games. Both documents are available on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk.

12 As to the meaning of 'bingo' see PARA 349 note 8.

13 le in reliance on the Gambling Act 2005 s 68(1).

14 Gambling Act 2005 s 68(3)(b). As to the meaning of 'bingo operating licence' see PARA 349 at head (2).

15 As to the meaning of 'general betting operating licence' see PARA 349 at head (3).

16 See note 9.

17 Gambling Act 2005 s 68(4).

18 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547.

19 As to categories of gaming machine see PARAS 548-552.

20 le the activities specified in accordance with the Gambling Act 2005 s 65(2): see PARA 349.

21 Gambling Act 2005 s 68(5). As to the meaning of 'pool betting operating licence' see PARA 349 at head (4). As to remote operating licences see PARA 351.

22 As to the meaning of 'gaming machine general operating licence' see PARA 349 at heads (6)-(7).

23 Gambling Act 2005 s 68(6).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(i) Operating Licences/A. NATURE AND FORM OF LICENCES/351. Remote operating licences.

351. Remote operating licences.

An operating licence¹ is a 'remote operating licence' if it authorises² activity to be carried on in respect of remote gambling³, or by means of remote communication⁴. A remote operating licence may not also authorise activity which is neither in respect of remote gambling, nor carried on by means of remote communication⁵.

An operating licence must state whether it is a remote operating licence or not⁶.

1 As to the meaning of 'operating licence' see PARA 349 note 2.

2 As to the meaning of 'authorises' see PARA 349 note 5.

3 As to the meaning of 'remote gambling' see PARA 308.

4 Gambling Act 2005 s 67(1). As to the meaning of 'remote communication' see PARA 308.

5 Gambling Act 2005 s 67(2).

6 Gambling Act 2005 s 67(3).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(i) Operating Licences/A. NATURE AND FORM OF LICENCES/352. Form of licence.

352. Form of licence.

An operating licence¹ must specify:

- 972 (1) the person to whom it is issued;
- 973 (2) the period during which it is to have effect; and
- 974 (3) any condition attached² by the Gambling Commission³.

The Secretary of State⁴ may by regulations require the Commission to ensure that an operating licence is issued in such form as the regulations may specify, and contains, in addition to the matters specified in heads (1) to (3) above, such information⁵ as the regulations may specify⁶.

1 As to the meaning of 'operating licence' see PARA 349 note 2.

2 Ie any condition attached under the Gambling Act 2005 s 75 or s 77: see PARA 357.

3 Gambling Act 2005 s 66(1). As to the Gambling Commission see PARA 4.

4 As to the Secretary of State see PARA 2.

5 The information referred to in the text may, in particular, include information about conditions attached to the licence by virtue of the Gambling Act 2005 s 78 (see PARA 358): s 66(2)(b).

6 Gambling Act 2005 s 66(2). At the date at which this volume states the law, no such regulations had been made.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(i) Operating Licences/B. APPLICATION FOR AND ISSUE OF LICENCES/353. Application for an operating licence.

B. APPLICATION FOR AND ISSUE OF LICENCES

353. Application for an operating licence.

A person may apply to the Gambling Commission¹ for an operating licence² to be issued authorising him to provide facilities for gambling³. An application may not be made by a child⁴ or young person⁵, or a group that includes a child or young person⁶.

An application must:

- 975 (1) specify the activities to be authorised by the licence⁷;
- 976 (2) specify an address in the United Kingdom⁸ at which a document issued under the Gambling Act 2005 may be served on the applicant⁹;
- 977 (3) be made in such form and manner as the Commission may direct¹⁰;
- 978 (4) state whether the applicant has been convicted of a relevant offence¹¹;
- 979 (5) state whether the applicant has been convicted of any other offence¹²;
- 980 (6) contain or be accompanied by such other information or documents as the Commission may direct¹³; and
- 981 (7) be accompanied by the prescribed¹⁴ fee¹⁵.

For these purposes, the offences specified as 'relevant offences' are offences under the legislation relating to gambling¹⁶, certain offences involving theft and other forms of dishonesty¹⁷ and certain other miscellaneous offences¹⁸.

The Secretary of State may by regulations:

- 982 (a) require an applicant for an operating licence to notify specified persons within a specified period, which may be wholly or partly before the application is made; and
- 983 (b) provide for the consequences of failure to comply with a requirement under head (a) above, which may, in particular, include provision for an application to be disregarded or for a licence to lapse¹⁹.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'operating licence' see PARA 349 note 2.

3 Gambling Act 2005 s 69(1). As to the meaning of 'providing facilities' for gambling see PARA 309.

4 As to the meaning of 'child' see PARA 331 note 2.

5 In the Gambling Act 2005, 'young person' means an individual who is not a child but who is less than 18 years old: ss 45(2), 353(1).

6 Gambling Act 2005 s 69(3).

7 Gambling Act 2005 s 69(2)(a). As to the meaning of 'authorised' see PARA 349 note 5.

8 As to the meaning of 'United Kingdom' see PARA 16 note 8.

9 Gambling Act 2005 s 69(2)(b).

10 Gambling Act 2005 s 69(2)(c). Where the Commission has power under Pt 5 (ss 65-126, Sch 7) (see PARAS 349 et seq, 354 et seq) to give a direction or impose a requirement it may give different directions or impose different requirements in relation to different cases or circumstances: s 124.

11 Gambling Act 2005 s 69(2)(d). In the Gambling Act 2005, 'relevant offence' means an offence listed in Sch 7 (see the text and notes 16-18) and an offence under the law of a country or territory outside the United Kingdom (a 'foreign offence') which prohibits a kind of activity prohibited by an offence listed in Sch 7 (a 'domestic offence'): s 126(2). For the purpose of s 126(2)(b) it is immaterial whether or not the foreign offence prohibits all the kinds of activity prohibited by the domestic offence, and whether or not the foreign offence prohibits kinds of activity not prohibited by the domestic offence: s 126(3). The Rehabilitation of Offenders Act 1974 s 4 (effect of rehabilitation: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 660 et seq) does not apply for the purposes of or in connection with the Gambling Act 2005 s 69(2)(d): s 125(a).

A reference in Sch 7 Pt 1 (paras 1-22A) (see the text and notes 16-18) to an offence under an Act or a provision of an Act includes a reference to an offence under subordinate legislation made under that Act or provision: Sch 7 para 22. The Armed Forces Act 2006 s 48 (attempts, conspiracy, encouragement and assistance and aiding and abetting outside England and Wales) applies for the purposes of the Gambling Act 2005 as if the reference in s 48(3)(b) to any of the following provisions of that Act were a reference to any provision of the Gambling Act 2005: Sch 7 para 22A (prospectively added by the Armed Forces Act 2006 Sch 16 para 246(b), as from a day to be appointed under s 383(2); prospectively amended by the Serious Crime Act 2007 Sch 5 para 6, as from a day to be appointed under s 94(1); at the date at which this volume states the law, no such days had been appointed and neither the Gambling Act 2005 Sch 7 para 22A nor that amendment to it was in force).

The Secretary of State may by order amend Sch 7 Pt 1 so as to add, vary or remove an entry: Sch 7 para 23. As to the exercise of this power see the Gambling Act 2005 (Relevant Offences) (Amendment) Order 2006, SI 2006/3391, cited in note 18; and as to the Secretary of State see PARA 2.

12 Gambling Act 2005 s 69(2)(e).

13 Gambling Act 2005 s 69(2)(f).

14 For these purposes, 'prescribed' means prescribed by regulations made by the Secretary of State; and the regulations may, in particular, make different provision for applications for the authorisation of different classes of activity, or different circumstances: s 69(5).

15 Gambling Act 2005 s 69(2)(g). See the Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006, SI 2006/3284, Pts 1-6 (regs 1-26) which came into operation on 1 January 2007: reg 1(2). Regulation 3 defines the units of division by which different kinds of operating licence are assigned to categories for the purpose of prescribing fees.

For the categories of non-remote operating licences see reg 4 (amended by SI 2008/1803); as to fee categories for non-remote operating licences see the Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006, SI 2006/3284, regs 5, 6, Sch 1 (as so amended); and for application fees for such licences see reg 7, Sch 2 (as so amended). Application fees are prescribed separately for non-remote supplementary operating licences; the application fee for such an operating licence is £165: see reg 4A(1) (added by SI 2008/1803). 'Supplementary operating licence' means a supplementary gambling software operating licence (see PARA 349 note 19) or a supplementary gaming machine technical operating licence (see PARA 349 note 16): Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006, SI 2006/3284, reg 2 (definition as so added).

As to remote operating licences see reg 9 (as so amended). Ancillary remote operating licences (as defined in reg 14) are distinguished from other remote operating licences for the purpose of prescribing fees. As to fee categories for remote operating licences see reg 10, Sch 4 (as so amended); and for application fees for such licences see reg 11, Sch 5 (as so amended). Application fees are prescribed separately for remote supplementary operating licences; the application fee for such an operating licence is £165: see reg 14A(1) (added by SI 2008/1803). They are also prescribed separately for remote general betting (limited) operating licences; the application fee for such an operating licence is £660: see the Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006, SI 2006/3284, reg 13(1). Regulation 14(2)-(5) sets out the four different types of ancillary remote operating licence. The application fee for an ancillary remote operating licence is £100: reg 14(6).

As to combined operating licences see reg 15 (as so amended); and for application fees for combined operating licences see reg 16. As to fees for simultaneous applications for two operating licences see reg 18; as to the fee payable on application for a licence when another application is pending see reg 19; and as to the fee payable when the holder of an existing licence applies for another licence, other than a supplementary operating licence, see reg 20 (as so amended).

16 The gambling offences listed in the Gambling Act 2005 Sch 7 are as follows, ie an offence under (1) the Gambling Act 2005; (2) the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 or the Lotteries and Amusements Act 1976 (all repealed); (3) the National Lottery etc Act 1993 or the National Lottery Act 1998 (see PARA 687 et seq): Gambling Act 2005 Sch 7 para 1.

17 The offences of theft etc listed in the Gambling Act 2005 Sch 7 are as follows:

- 95 (1) an offence under any of the following provisions of the Theft Act 1968, ie: s 1 (theft: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 282); s 8 (robbery: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 293); s 9 (burglary: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 294); s 10 (aggravated burglary: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 295); s 11 (theft from exhibition, etc: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 297); s 12A (aggravated vehicle-taking: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 299); s 13 (abstracting electricity: see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1189); ss 15, 15A, 16 (all repealed); s 17 (false accounting: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 316); s 19 (false statement by director, etc: **COMPANIES** vol 14 (2009) PARA 314); s 20 (suppression of document, etc: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 317); s 21 (blackmail: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 308); s 22 (handling stolen goods: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 302); s 24A (retaining wrong credit: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 307); and s 25 (going equipped for stealing, etc: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 296) (Gambling Act 2005 Sch 7 para 2);
- 96 (2) an offence under the Theft Act 1978 s 1 or s 2 (both repealed) (Gambling Act 2005 Sch 7 para 3);
- 97 (3) an offence under the Fraud Act 2006 (Gambling Act 2005 Sch 7 para 3A (added by the Fraud Act 2006 s 14(1), Sch 1 para 38));
- 98 (4) an offence under the Customs and Excise Management Act 1979 s 170 or s 170B (evasion of duty: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 1178, 1180) (Gambling Act 2005 Sch 7 para 4);
- 99 (5) an offence under the Civic Government (Scotland) Act 1982 s 58(1) (convicted thief in possession) (Gambling Act 2005 Sch 7 para 5);
- 100 (6) the offence at common law of conspiracy to defraud (Gambling Act 2005 Sch 7 para 6);
- 101 (7) in Scotland the offences at common law of theft, robbery, theft by housebreaking, fraud, extortion, and reset (Gambling Act 2005 Sch 7 para 7).

18 The miscellaneous offences listed in the Gambling Act 2005 Sch 7 are as follows:

- 102 (1) an offence listed in the Criminal Justice Act 2003 Sch 15 Pt 2 (specified sexual offences: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 71) (Gambling Act 2005 Sch 7 para 8 (substituted by SI 2006/3391));
- 103 (2) an offence under any of the Sexual Offences Act 1956 s 8, s 12 or s 18 (all repealed) (Gambling Act 2005 Sch 7 para 8A (added by SI 2006/3391));
- 104 (3) an offence under the Sexual Offences (Amendment) Act 2000 s 3 (repealed) (Gambling Act 2005 Sch 7 para 8B (added by SI 2006/3391));
- 105 (4) an offence under the law of England and Wales which leads, or is intended to lead, to a person's death or to physical injury to a person: (Gambling Act 2005 Sch 7 para 9 (substituted by SI 2006/3391));
- 106 (5) an offence of arson under the Criminal Damage Act 1971 s 1 (destroying or damaging property: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 334) (Gambling Act 2005 Sch 7 para 9A (added by SI 2006/3391));
- 107 (6) an offence under the Firearms Act 1968 or the Firearms (Amendment) Act 1988 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 630 et seq) (Gambling Act 2005 Sch 7 para 10);

- 108 (7) an offence under any of the following provisions of the Misuse of Drugs Act 1971, ie s 4(2) (production), s 4(3) (supply), s 5(3) (possession with intent to supply) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 772); and s 8 (permitting activity on premises: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 777) (Gambling Act 2005 Sch 7 para 11);
 - 109 (8) an offence under the Forgery and Counterfeiting Act 1981, except for ss 18, 19 (reproduction and imitation notes and coins: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 548-549) (Gambling Act 2005 Sch 7 para 12);
 - 110 (9) an offence under the Private Security Industry Act 2001 s 3 (unlicensed activity: see **TRADE AND INDUSTRY** vol 97 (2010) PARA 893) (Gambling Act 2005 Sch 7 para 13);
 - 111 (10) an offence (a) at the date at which this volume states the law, under the Army Act 1955 s 70, the Air Force Act 1955 s 70 or the Naval Discipline Act 1957 s 42 (all prospectively repealed) in so far as it relates to an offence listed elsewhere in the Gambling Act 2005 Sch 7 (Gambling Act 2005 Sch 7 paras 14-16 (prospectively repealed)); or (b) as from a day to be appointed, an offence under the Armed Forces Act 2006 s 42 as respects which the corresponding offence under the law of England and Wales (within the meaning given by s 42) is an offence listed elsewhere in the Gambling Act 2005 Sch 7 (Sch 7 para 14A (prospectively added by the Armed Forces Act 2006 Sch 16 para 246(a), as from a day to be appointed under s 383(2); at the date at which this volume states the law, no such day had been appointed and neither that amendment, nor the repeal noted in head (a) above, was in force));
 - 112 (11) an offence under the Civic Government (Scotland) Act 1982 s 52 or s 52A (offences relating to indecent photographs of children) (Gambling Act 2005 Sch 7 para 17);
 - 113 (12) an offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995, ie s 1 (incest), s 2 (intercourse with a stepchild), s 3 (intercourse with child under 16 by person in position of trust), s 5 (unlawful intercourse with a girl under 16), s 6 (indecent behaviour towards girl between 12 and 16), s 8 (detention of woman in brothel or other premises), s 10 (person having parental responsibilities causing or encouraging sexual activity in relation to a girl under 16), and s 13(5) (homosexual offences) (Gambling Act 2005 Sch 7 para 18);
 - 114 (13) an offence under either of the following provisions of the Mental Health (Scotland) Act 1984, ie s 106 (protection of mentally handicapped females), and s 107 (protection of patients) (Gambling Act 2005 Sch 7 para 18A (added by SI 2006/3391));
 - 115 (14) an offence under either of the following provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003, ie s 311 (non-consensual sexual acts), and s 313 (persons providing care services: sexual offences) (Gambling Act 2005 Sch 7 para 18B (added by SI 2006/3391));
 - 116 (15) an offence under any of the following provisions of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, ie s 1 (meeting a child following certain preliminary contact), s 9 (paying for sexual services of a child), s 10 (causing or inciting provision by child of sexual services or child pornography), and s 11 (controlling a child providing sexual services or involved in pornography) (Gambling Act 2005 Sch 7 para 18C (added by SI 2006/3391));
 - 117 (16) in Scotland, the offences at common law of rape, clandestine injury to women, abduction of a woman or girl with intent to rape or ravish, assault with intent to rape or ravish, indecent assault, lewd, indecent or libidinous behaviour or practices, shameless indecency, sodomy, murder, culpable homicide, assault, wilful fireraising, culpable and reckless fireraising, and bestiality (Gambling Act 2005 Sch 7 para 19 (amended by SI 2006/3391));
 - 118 (17) in Scotland, the offence at common law of uttering and fraud (Gambling Act 2005 Sch 7 para 20);
 - 119 (18) an inchoate offence relating to an offence listed elsewhere in Sch 7 (Sch 7 para 21).
- 19 Gambling Act 2005 s 69(4). At the date at which this volume states the law, no such regulations had been made.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

353 Application for an operating licence

NOTES 11, 18--Appointed day for the commencement of the Armed Forces Act 2006 Sch 16 para 245 is 31 October 2009: SI 2009/1167.

NOTE 15--SI 2006/3284 regs 3, 7, 10, 11, 16 amended, Schs 1, 2, 4, 5 substituted, reg 16A (application fee for certain combined remote licences) added: SI 2009/1837.

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354. Procedure for considering an application.

For the purpose of considering an application for an operating licence¹ the Gambling Commission² may require the applicant to provide information³ and may consult, and have regard to information provided by or an opinion⁴ stated by, any person⁵.

In particular, the Commission may require the production of an enhanced criminal record certificate⁶ relating to the applicant, or to a person relevant to the application⁷.

The statement of principles for licensing and regulation maintained by the Commission⁸ must, in particular, specify the Commission's practice in relation to:

- 984 (1) the delegation of functions in relation to applications;
- 985 (2) the holding of oral hearings of applications; and
- 986 (3) evidence required or accepted in connection with applications⁹.

The Commission may disregard an irregularity or deficiency in or in relation to an application, other than a failure to pay the required¹⁰ fee¹¹.

¹ Ie an application under the Gambling Act 2005 s 69: see PARA 353. As to the meaning of 'operating licence' see PARA 349 note 2.

² As to the Gambling Commission see PARA 4.

³ For these purposes, 'information' means information about the applicant, a person relevant to the application, or the licensed activities: Gambling Act 2005 s 73(2). A reference to the licensed activities or to a person relevant to an application is to be construed in accordance with s 70(9) (see PARA 355): s 73(6). 'The licensed activities' in relation to an operating licence means the activities which it authorises: s 126(1). As to the meaning of 'authorises' see PARA 349 note 5.

⁴ For these purposes, 'opinion' means an opinion about the applicant, a person relevant to the application, or the licensed activities: Gambling Act 2005 s 73(2).

⁵ Gambling Act 2005 s 73(1).

⁶ Ie under the Police Act 1997 s 113B: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 713 et seq.

⁷ Gambling Act 2005 s 73(3). Section 73(3) refers to an enhanced criminal record certificate under the Police Act 1997 s 115, but s 115 is repealed and replaced by s 113B: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 713 et seq.

⁸ Ie the statement maintained under the Gambling Act 2005 s 23: see PARA 336.

⁹ Gambling Act 2005 s 73(4).

¹⁰ Ie the fee required by the Gambling Act 2005 s 69(2)(g): see PARA 353 text and note 15.

¹¹ Gambling Act 2005 s 73(5).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(i) Operating Licences/B. APPLICATION FOR AND ISSUE OF LICENCES/355. Consideration of the application.

355. Consideration of the application.

In considering an application for an operating licence¹ the Gambling Commission²:

- 987 (1) must have regard to the licensing objectives³;
- 988 (2) must form and have regard to an opinion of the applicant's suitability to carry on the licensed activities⁴;
- 989 (3) must consider the suitability of any gaming machine⁵ to be used in connection with the licensed activities; and
- 990 (4) may consider the suitability of any other equipment⁶ to be used in connection with the licensed activities, by reference, in particular, to any relevant provision of standards established⁷ in respect of remote gambling⁸.

For the purpose of head (2) above, the Commission may, in particular, have regard to:

- 991 (a) the integrity of the applicant or of a person relevant to the application⁹;
- 992 (b) the competence of the applicant or of a person relevant to the application to carry on the licensed activities in a manner consistent with pursuit of the licensing objectives;
- 993 (c) the financial and other circumstances of the applicant or of a person relevant to the application and, in particular, the resources likely to be available for the purpose of carrying on the licensed activities¹⁰.

In considering an application for a non-remote casino operating licence¹¹ the Commission must have regard, in addition to the matters specified above, to the applicant's commitment to protecting vulnerable persons from being harmed or exploited by gambling¹² and to making assistance available to persons who are or may be affected by problems related to gambling¹³.

The statement of principles for licensing and regulation maintained by the Commission¹⁴ must specify the principles to be applied by the Commission in considering applications for operating licences¹⁵. The statement must, in particular, specify the kind of evidence to which the Commission will have regard when assessing integrity, competence and financial or other circumstances; and that evidence may include:

- 994 (i) interviews conducted by or on behalf of the Commission;
- 995 (ii) references provided to the Commission at the request of the applicant;
- 996 (iii) information or opinions provided to the Commission, whether or not on request, by other persons;
- 997 (iv) information sought by the Commission as to solvency in general and financial reserves in particular;
- 998 (v) the completion of training, whether provided in accordance with arrangements made by the Commission or otherwise;
- 999 (vi) the possession of qualifications, whether awarded in accordance with arrangements made by the Commission or otherwise¹⁶.

The statement may specify a class of applicant or other person in relation to whom the Commission will or may assume integrity for the purpose of head (a) above¹⁷.

The statement must also, in particular, specify the kind of evidence to which the Commission will have regard in considering the suitability of a gaming machine or of other equipment; and that evidence may include the result of a test carried out by a person at the request of the Commission and the opinion of any person¹⁸. The statement may specify a class of gaming machine or other equipment in relation to which the Commission will or may assume suitability¹⁹. Heads (3) and (4) above do not apply to the consideration of an application in so far as it specifies that a gaming machine or other equipment falling within a class so specified is to be used in connection with the licensed activities²⁰.

Without prejudice to the generality of the above provisions, the Commission may refuse an application if the applicant or a person relevant to the application²¹ has a conviction²² for a relevant offence²³.

In determining whether to grant an operating licence the Commission may not have regard to the area in Great Britain²⁴ within which it is proposed to provide facilities²⁵, or the expected demand for facilities which it is proposed to provide²⁶.

1 Ie an application under the Gambling Act 2005 s 69: see PARA 353. As to the meaning of 'operating licence' see PARA 349 note 2.

2 As to the Gambling Commission see PARA 4.

3 As to the licensing objectives see PARA 331.

4 For these purposes, in relation to an application, a reference to the licensed activities is a reference to the activities which will be the licensed activities if the application is granted: Gambling Act 2005 s 70(9)(a). See also PARA 354 note 3.

5 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547.

6 For these purposes, 'equipment' includes (1) a computer; (2) a device for the playing of a casino game; and (3) any other piece of equipment; but a gaming machine is not equipment for these purposes: Gambling Act 2005 s 70(10). As to the meaning of 'casino game' see PARA 311.

7 Ie standards established under the Gambling Act 2005 s 89: see PARA 368.

8 See the Gambling Act 2005 s 70(1).

9 For these purposes, a person is relevant to an application if, in particular, he is likely to exercise a function in connection with, or to have an interest in, the licensed activities: Gambling Act 2005 s 70(9)(b).

10 Gambling Act 2005 s 70(2).

11 As to the meaning of 'casino operating licence' see PARA 349 at head (1); and as to remote and non-remote gambling see PARA 308.

12 As to the meaning of 'gambling' see PARA 308.

13 Gambling Act 2005 s 70(3).

14 Ie the statement maintained under the Gambling Act 2005 s 23: see PARA 336.

15 Gambling Act 2005 s 70(4).

16 Gambling Act 2005 s 70(5).

17 Gambling Act 2005 s 70(7).

18 Gambling Act 2005 s 70(6).

19 Gambling Act 2005 s 70(8). A class may, in particular, be defined by reference to standards under s 89 (see PARA 368) or s 96 (see PARA 375) or by reference to regulations under Pt 10 (ss 235-251) (see PARA 547 et seq): s 70(8)(a).

20 Gambling Act 2005 s 70(8)(b).

21 See note 9 (definition applied by the Gambling Act 2005 s 71(3)).

22 In the Gambling Act 2005 Pt 5 (ss 65-126, Sch 7), 'conviction' has the meaning given by the Rehabilitation of Offenders Act 1974 s 1(4) (see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 660 et seq), and includes, to the extent required by the Gambling Act 2005 s 125, a spent conviction within the meaning of that 1974 Act: Gambling Act 2005 s 126(1). The Rehabilitation of Offenders Act 1974 s 4 (effect of rehabilitation: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 660 et seq) does not apply for the purposes of or in connection with the Gambling Act 2005 s 71(1): s 125(b).

23 Gambling Act 2005 s 71(1), (2).

24 As to the meaning of 'Great Britain' see PARA 16 note 8.

25 As to the meaning of 'providing facilities' for gambling see PARA 309.

26 Gambling Act 2005 s 72.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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356. Determination of the application.

On considering an application for an operating licence¹ the Gambling Commission² must either grant it, reject it, or grant it in respect of one or more of the specified activities³ and reject it in respect of the others⁴.

Where the Commission grants an application in whole or in part it must as soon as is reasonably practicable notify⁵ the applicant of the grant, and issue an operating licence to the applicant⁶; and where the Commission rejects an application in whole or in part it must as soon as is reasonably practicable notify the applicant of the rejection, and of the reasons for it⁷. There is a right of appeal to the Gambling Appeals Tribunal against such a rejection⁸.

1 le an application under the Gambling Act 2005 s 69: see PARA 353.

2 As to the Gambling Commission see PARA 4.

3 le the activities specified in accordance with the Gambling Act 2005 s 69(2)(a): see PARA 353.

4 Gambling Act 2005 s 74(1).

5 A requirement under the Gambling Act 2005 to give a notice or to notify is a requirement to give notice in writing; and for that purpose (1) a message sent by facsimile transmission or electronic mail is to be treated as a notice given in writing; and (2) a notice sent to a licensee at the address specified for that purpose in the licence is, unless the contrary is proved, to be treated as reaching him within a period within which it could reasonably be expected to reach him in the ordinary course of events: s 353(4). As to the meaning of 'licensee' see PARA 349 note 5.

6 Gambling Act 2005 s 74(2).

7 Gambling Act 2005 s 74(3).

8 See the Gambling Act 2005 s 141(1). As to the Gambling Appeals Tribunal see PARA 6; and as to appeals see PARA 434 et seq.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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C. CONDITIONS ATTACHED TO LICENCES

(A) IN GENERAL

357. General and individual conditions imposed by the Gambling Commission.

The Gambling Commission¹ may specify conditions to be attached to each operating licence², or to each operating licence falling within a specified class³; and a class may be defined wholly or partly by reference to:

- 1000 (1) the nature of the licensed activities⁴;
- 1001 (2) the circumstances in which the licensed activities are carried on;
- 1002 (3) the nature or circumstances of the licensee⁵ or of another person involved or likely to be involved in the conduct of the licensed activities⁶.

Where the Commission issues an operating licence it must attach to the licence any condition so specified as a condition to be attached to operating licences of a class within which the licence falls⁷.

Before so specifying a condition⁸ the Commission must consult one or more persons who in the Commission's opinion represent the interests of operating licensees who may be affected by the condition, and such of the specified persons⁹ as the Commission thinks appropriate, if any¹⁰. Where the Commission proposes to specify a condition:

- 1003 (a) at least three months before making the specification the Commission must give notice¹¹ of it to the holder¹² of each licence which has effect at that time, and is within a class affected by the specification¹³;
- 1004 (b) if the Commission issues, after that time but before the specification is made, an operating licence of a class affected by the specification, the Commission must give the licensee notice of the proposed specification¹⁴; and
- 1005 (c) on the making of the specification an existing licence is to be subject¹⁵ to the condition specified¹⁶.

If, however, the Commission thinks it necessary by reason of urgency to make a specification without giving the notice required by head (a) above, the Commission must give as much notice as it thinks possible in the circumstances to the persons mentioned in that head¹⁷. Head (b) above then has effect after the time when such notice is given¹⁸, and on the making of the specification an existing licence is to be subject¹⁹ to the condition specified²⁰.

The Commission must publish any specification as soon as is reasonably practicable²¹. It may amend or revoke a condition which has been specified²².

Where the Commission issues an operating licence it may attach a condition to the licence²³.

The scope of these powers to attach conditions is discussed below²⁴, as are the conditions that may or must be imposed with regard to particular matters²⁵ or in relation to particular kinds of operating licence²⁶.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'operating licence' see PARA 349 note 2.

3 Gambling Act 2005 s 75(1). The Gambling Commission has published a series of documents setting out conditions applicable to classes of operating licences. These are set out in the current edition of Paterson's Licensing Acts and published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk. See in particular *Licence Conditions and Codes of Practice* (June 2007, Gambling Commission) set out in Paterson's Licensing Acts (116th Edn, 2008) at para 3.2070. Revised *Licence Conditions and Codes of Practice* (October 2008, Gambling Commission) will come into force on 1 January 2009, and are accessible on the Commission's website.

4 As to the meaning of 'the licensed activities' see PARA 354 note 3.

5 As to the meaning of 'licensee' see PARA 349 note 5.

6 Gambling Act 2005 s 75(2).

7 Gambling Act 2005 s 75(3). Any condition so attached must be specified in the operating licence: see s 66(1)(c); and PARA 352.

8 A reference in the Gambling Act 2005 s 76 (see the text and notes 9-23) to the specification of a condition includes a reference to the amendment or revocation of a condition: s 76(1).

9 Ie the persons specified in the Gambling Act 2005 s 23(5): see PARA 336.

10 Gambling Act 2005 s 76(2).

11 As to the method of giving notice see PARA 356 note 5.

12 As to the meaning of 'holder' see PARA 350 note 5.

13 Gambling Act 2005 s 76(4)(a).

14 Gambling Act 2005 s 76(4)(b).

15 Ie by virtue of the Gambling Act 2005 s 76(4): see heads (a)-(c) in the text.

16 Gambling Act 2005 s 76(4)(c). Section 76(4)(c), in its application to the amendment or revocation of a condition (by virtue of s 76(1): see the text and note 22), is to be treated as making existing licences subject to the condition as amended, or relieving existing licences from the condition revoked: s 76(6).

17 Gambling Act 2005 s 76(5)(a).

18 Gambling Act 2005 s 76(5)(b).

19 See note 15.

20 See the Gambling Act 2005 s 76(5)(c), applying s 76(4)(c).

21 Gambling Act 2005 s 76(3).

22 See the Gambling Act 2005 s 76(1).

23 Gambling Act 2005 s 77. Any condition so attached must be specified in the operating licence: see s 66(1)(c); and PARA 352.

24 See the Gambling Act 2005 s 79; and PARA 359.

25 See the Gambling Act 2005 ss 80-87; and PARA 360 et seq.

26 See the Gambling Act 2005 ss 89-99; and PARA 368 et seq.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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358. Secretary of State's power to impose a condition.

The Secretary of State¹ may by regulations provide for a specified condition to be attached to operating licences² falling within a specified description³. Transitional provision of such regulations⁴ may, in particular, apply a condition, with or without modification, to licences issued before the regulations are made or come into force⁵.

Regulations made under the above provisions⁶ impose the following conditions:

- 1006 (1) the condition set out below must be attached to each casino operating licence⁷, namely that where, in reliance on the operating licence, a game is played on a wholly automated gaming table⁸, the game must be capable of being played by four persons at the same time using four separate player positions⁹;
- 1007 (2) the condition set out below must be attached to each bingo operating licence¹⁰, namely that the statutory provision which authorises the provision of facilities for prize gaming in licensed bingo premises¹¹ applies only in respect of facilities for prize gaming provided by the holder¹² of the operating licence in accordance with heads (a) to (e) below¹³; and accordingly that:
 - 49 72. (a) the amount charged by way of participation fee¹⁴ in respect of any one chance to win a prize¹⁵ in a particular game does not exceed 50 pence¹⁶;
 73. (b) where in paying for a chance to win a prize in a game a person acquires the chance to win more than one prize, the limit in head (a) above applies despite the fact that the chance provides the opportunity to win more than one prize¹⁷;
 74. (c) the aggregate amount of the participation fees charged for participating in a particular game does not exceed £500¹⁸;
 75. (d) where a prize for which a game is played is money, the amount of that prize does not exceed £50, if no person under the age of 18 years is permitted to be on the premises¹⁹ at any time when the game is being played²⁰, and £35, in all other cases²¹;
 76. (e) the aggregate amount or value of the prizes for which a game is played does not exceed £500²².

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Regulations prescribing a maximum value of prizes for a purpose of the Gambling Act 2005 may include provision for determining the value of a prize²³. The imposition by or by virtue of that Act of a maximum on the value of a prize does not prevent an arrangement between a person who has won one or more prizes and a person who provides facilities for gambling²⁴ whereby the prize or prizes are exchanged, whether for money or for one or more articles; provided that:

- 1008 (i) the amount of money or the value of the articles for which the prize or prizes are exchanged does not exceed the maximum amount or value of the prize, or the aggregate maximum amount or value of the prizes, that the person could lawfully have won; and

1009 (ii) the nature of the substituted prize or prizes complies with any requirements of or by virtue of that Act as to the nature of the prize or prizes that the person could lawfully have won²⁵.

1 As to the Secretary of State see PARA 2.

2 As to the meaning of 'operating licence' see PARA 349 note 2.

3 Gambling Act 2005 s 78(1).

4 Ie transitional provision made by virtue of the Gambling Act 2005 s 355(1)(c).

5 Gambling Act 2005 s 78(2).

6 Ie the Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, which came into force on 1 September 2007: see reg 1(1).

7 Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, reg 2(1). As to the meaning of 'casino operating licence' see PARA 349 at head (1).

8 For these purposes, 'wholly automated gaming table' means equipment that would fall within the definition of a gaming machine in the Gambling Act 2005 s 235 (see PARA 547) but for its exclusion from that definition by s 235(2)(i): Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, reg 2(3).

9 Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, reg 2(2).

10 Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, reg 3(1). As to the meaning of 'bingo operating licence' see PARA 349 at head (2).

11 Ie the Gambling Act 2005 s 291(1): see PARA 675. As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'prize gaming' see the Gambling Act 2005 ss 288, 353(1); and PARA 592. For these purposes, 'licensed bingo premises' means premises in respect of which a bingo premises licence for the time being has effect: Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, reg 1(2). As to bingo premises licences see PARA 460 at head (2); and as to the meaning of 'premises' see PARA 311 note 5.

12 As to the meaning of 'holder' see PARA 350 note 5.

13 Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, reg 3(2).

14 As to the meaning of 'participation fee' see the Gambling Act 2005 ss 344, 353(1); and PARA 370 note 4.

15 As to the meaning of 'prize' see PARA 310 note 2.

16 Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, reg 3(3).

17 Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, reg 3(4).

18 Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, reg 3(5).

19 For these purposes, and the purposes of the Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, reg 3(7) (see note 20), any reference to the premises is to the licensed bingo premises in which the game referred to in head (d) in the text is being played: Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, reg 3(8).

20 For these purposes, no account is to be taken of any person under the age of 18 years who is permitted to be on the premises if (1) he is employed to perform any function on the premises; and (2) he is on the premises in the course of his employment: Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, reg 3(7).

21 Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, reg 3(6).

22 Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, reg 3(9).

23 Gambling Act 2005 s 343(1). Regulations by virtue of s 343(1) may, in particular (1) apply (with or without modification) or make provision similar to a provision of the Betting and Gaming Duties Act 1981 s 20

(expenditure on bingo winnings: see PARA 766); (2) confer a discretion on the Secretary of State, on the Gambling Commission or on another person; (3) provide for an appeal; (4) confer jurisdiction on a court or tribunal: Gambling Act 2005 s 343(2). As to the Gambling Commission see PARA 4. At the date at which this volume states the law, no regulations under s 343 had been made.

24 As to the meaning of 'gambling' see PARA 308.

25 Gambling Act 2005 s 343(3).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

358 Secretary of State's power to impose a condition

TEXT AND NOTE 16--Maximum fee now £1: SI 2007/2257 reg 3(3) (amended by SI 2010/774).

TEXT AND NOTES 19-21--Maximum prizes now £100 and £70, respectively: SI 2007/2257 reg 3(6) (amended by SI 2010/774).

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359. Scope of powers to attach conditions.

Without prejudice to the generality of the powers conferred on the Gambling Commission¹ and the Secretary of State² to impose conditions on operating licences³, a condition attached under any of those statutory powers may, in particular, do any of the things specified in heads (1) to (8) below⁴:

- 1010 (1) a condition may have the effect of restricting the activities that may be carried on in reliance on the licence by reference to the nature of the activities, the circumstances in which they are carried on, or their extent⁵;
- 1011 (2) a condition may make provision wholly or partly by reference to:
 - 51 77. (a) the nature of the licensed activities⁶;
 78. (b) the circumstances in which the licensed activities are carried on;
 79. (c) the nature or circumstances of the licensee⁷ or of another person involved or likely to be involved in the conduct of the licensed activities⁸;
- 52 1012 (3) in regulating the licensed activities a condition may make provision about:
 - 53 80. (a) the facilities that may or must be provided in connection with the licensed activities;
 81. (b) the manner in which facilities are provided;
 82. (c) the number of persons that may or must be employed in the provision of facilities;
 83. (d) the financial resources available for particular purposes to the person providing facilities;
 84. (e) any other matter⁹;
- 54 1013 (4) a condition may relate to the financial circumstances of the licensee or of another person involved or likely to be involved in the conduct of the licensed activities; in particular, a condition may make provision about the maintenance of reserves in respect of potential liabilities¹⁰;
- 1014 (5) a condition of a remote operating licence¹¹ may restrict the methods of communication that may be used in the course of the licensed activities¹²;
- 1015 (6) a condition may make provision about how facilities for gambling¹³ are advertised or described¹⁴;
- 1016 (7) a condition may make provision about the provision of assistance to persons who are or may be affected by problems related to gambling¹⁵;
- 1017 (8) a condition may make provision about:
 - 55 85. (a) establishing the identity of users of facilities;
 86. (b) recording the identity of users of facilities;
 87. (c) restricting facilities to persons registered in respect of the facilities in advance¹⁶.

56

- 1 As to the Gambling Commission see PARA 4.
- 2 As to the Secretary of State see PARA 2.
- 3 le the powers conferred by the Gambling Act 2005 ss 75, 77 and 78: see PARAS 357-358. As to the meaning of 'operating licence' see PARA 349 note 2.
- 4 Gambling Act 2005 s 79(1).
- 5 Gambling Act 2005 s 79(2).
- 6 As to the meaning of 'the licensed activities' see PARA 354 note 3.
- 7 As to the meaning of 'licensee' see PARA 349 note 5.
- 8 Gambling Act 2005 s 79(3).
- 9 Gambling Act 2005 s 79(4).
- 10 Gambling Act 2005 s 79(5).
- 11 As to the meaning of 'remote operating licence' see PARA 351.
- 12 Gambling Act 2005 s 79(6).
- 13 As to the meaning of 'gambling' see PARA 308; and as to the meaning of 'providing facilities' for gambling see PARA 309.
- 14 Gambling Act 2005 s 79(7). As to the meaning of 'advertising gambling' see ss 327, 352(2)(b); and PARA 677.
- 15 Gambling Act 2005 s 79(8).
- 16 Gambling Act 2005 s 79(9).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(B) PARTICULAR CONDITIONS

360. Requirement for a personal licence.

Except in relation to a bingo operating licence¹ issued to a members' club², a commercial club³ or a miners' welfare institute⁴, the Gambling Commission⁵ must use its powers to impose general and individual conditions⁶ to ensure that in respect of each operating licence⁷ at least one person occupies a specified management office⁸ in or in respect of the licensee or in connection with the licensed activities, and holds a personal licence⁹ authorising the performance of the functions of the office¹⁰. Such provision may be general or may relate only to specified kinds of operating licence, specified cases, or specified circumstances¹¹.

A general or individual condition imposed by the Commission¹² may impose requirements which relate to a management office and are in addition to any required by the above provisions¹³.

A condition attached to an operating licence by virtue of the Commission's or the Secretary of State's statutory powers to impose conditions¹⁴ may, in particular, provide that:

1018 (1) if a specified management office is held in or in respect of the licensee or in connection with a licensed activity, whether or not in pursuance of another condition:

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88. (a) it must be held by an individual who holds a personal licence authorising the performance of the functions of the office; and

89. (b) anything done in the performance of the functions of the office must be done in accordance with the terms and conditions of the personal licence¹⁵;

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1019 (2) if a specified operational function is performed in connection with a licensed activity it must be performed:

59

90. (a) by an individual who holds a personal licence authorising performance of the function; and

91. (b) in accordance with the terms and conditions of the personal licence¹⁶.

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In relation to a bingo operating licence issued to a members' club, a commercial club or a miners' welfare institute, however, a condition attached by virtue of those statutory powers¹⁷ may not require that a person hold a personal licence¹⁸ or operate by reference to whether a person holds a personal licence¹⁹.

1 As to the meaning of 'bingo operating licence' see PARA 349 at head (2).

2 As to the meaning of 'members' club' see the Gambling Act 2005 ss 266, 353(1); and PARA 578.

3 As to the meaning of 'commercial club' see the Gambling Act 2005 ss 267, 353(1); and PARA 579.

4 See the Gambling Act 2005 s 80(9)(a). As to the meaning of 'miners' welfare institute' see ss 268, 353(1); and PARA 580.

5 As to the Gambling Commission see PARA 4.

6 le its powers under the Gambling Act 2005 ss 75, 77: see PARA 357.

7 As to the meaning of 'operating licence' see PARA 349 note 2.

8 For these purposes, 'management office' in relation to a licensee means (1) if the licensee is a company, the office of director; (2) if the licensee is a partnership (including a limited liability partnership), the office of partner; (3) if the licensee is an unincorporated association, any office in the association; and (4) in any case, any position the occupier of which is required, by the terms of his appointment, to take or share responsibility for (a) the conduct of a person who performs an operational function in connection with a licensed activity; or (b) facilitating or ensuring compliance with terms or conditions of the operating licence: Gambling Act 2005 s 80(5). 'Operational function' means (i) any function which enables the person exercising it to influence the outcome of gambling; (ii) receiving or paying money in connection with gambling; and (iii) manufacturing, supplying, installing, maintaining or repairing a gaming machine: s 80(6). The Secretary of State may by order amend the definition of 'management office' or 'operational function' for these purposes: s 80(8). As to the meaning of 'licensee' see PARA 349 note 5; as to the meaning of 'licensed activity' see PARA 354 note 3; as to the meaning of 'gambling' see PARA 308; as to the meaning of 'gaming machine' see ss 235, 353(1); and PARA 547; and as to the Secretary of State see PARA 2.

'Director' has the meaning given by the Companies Act 2006 s 250, and includes a shadow director within the meaning of s 251: Gambling Act 2005 s 353(1) (definition substituted by SI 2007/2194). See further **COMPANIES** vol 14 (2009) PARA 478 et seq.

9 As to personal licences see PARA 400 et seq.

10 Gambling Act 2005 s 80(1).

11 Gambling Act 2005 s 80(7).

12 le a condition under the Gambling Act 2005 s 75 or s 77: see PARA 357.

13 Gambling Act 2005 s 80(2).

14 le by virtue of the Gambling Act 2005 ss 75, 77 (see PARA 357) or s 78 (see PARA 358).

15 Gambling Act 2005 s 80(3).

16 Gambling Act 2005 s 80(4).

17 See note 14.

18 Gambling Act 2005 s 80(9)(b)(i).

19 Gambling Act 2005 s 80(9)(b)(ii).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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361. Conditions with regard to credit and inducements.

A condition attached to an operating licence¹ by virtue of the Gambling Commission's² or the Secretary of State's³ statutory powers to impose conditions⁴ may, in particular, restrict or otherwise make provision about:

- 1020 (1) the giving of credit⁵ in connection with the licensed activities⁶;
- 1021 (2) the making of offers designed to induce persons to participate, or to increase their participation, in the licensed activities;
- 1022 (3) participation in arrangements for inducing, permitting or assisting persons to gamble⁷.

A non-remote casino operating licence⁸ or a non-remote bingo operating licence⁹ must be subject to the condition that the licensee¹⁰ may not give credit in connection with gambling, or participate in, arrange, permit or knowingly facilitate the giving of credit in connection with gambling¹¹; but this condition does not prevent the licensee from permitting the installation and use on the premises of a machine enabling cash to be obtained on credit from a person (the 'credit provider') provided that:

- 1023 (a) the licensee has no other commercial connection with the credit provider in relation to gambling;
- 1024 (b) the licensee neither makes nor receives any payment or reward, whether by way of commission, rent or otherwise, in connection with the machine; and
- 1025 (c) any conditions about the nature, location or use of the machine attached by virtue of the statutory powers referred to above¹² are complied with¹³.

1 As to the meaning of 'operating licence' see PARA 349 note 2.

2 As to the Gambling Commission see PARA 4.

3 As to the Secretary of State see PARA 2.

4 I.e. by virtue of ss 75, 77 (see PARA 357) or s 78 (see PARA 358).

5 For these purposes, 'credit' includes any form of financial accommodation, and in particular, the acceptance by way of payment of a fee, charge or stake of anything other than (1) cash; (2) a cheque which is not post-dated and for which full value is given; or (3) a debit card payment which is not post-dated and for which full value is given: Gambling Act 2005 s 81(4). 'Debit card payment' means a payment debited against a person's banking account, and made by means of a card which is not a credit-token within the meaning of the Consumer Credit Act 1974 s 14 (see **CONSUMER CREDIT** vol 9(1) (Reissue) PARA 88): Gambling Act 2005 s 81(5). As to the meaning of 'stake' see PARA 312 note 6.

6 As to the meaning of 'the licensed activities' see PARA 354 note 3.

7 Gambling Act 2005 s 81(1). As to the meaning of 'gamble' and 'gambling' see PARA 308.

8 As to the meaning of 'casino operating licence' see PARA 349 at head (1).

9 As to the meaning of 'bingo operating licence' see PARA 349 at head (2).

10 As to the meaning of 'licensee' see PARA 349 note 5.

11 Gambling Act 2005 s 81(2).

12 See note 4.

13 Gambling Act 2005 s 81(3).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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362. Conditions requiring compliance with code of practice.

An operating licence¹ must be subject to the condition that the licensee² ensures compliance with any relevant social responsibility provision of a code³ of practice issued⁴ by the Gambling Commission⁵. This does not, however, prevent compliance with a provision of a code, other than a social responsibility provision, from being made the subject of a condition imposed⁶ under the Commission's or the Secretary of State's⁷ statutory powers⁸.

1 As to the meaning of 'operating licence' see PARA 349 note 2.

2 The reference in the text to a licensee includes a reference to anyone employed or engaged by a licensee to perform an operational function within the meaning of the Gambling Act 2005 s 80 (see PARA 360 note 8): s 82(2)(a). As to the meaning of 'licensee' in relation to an operating licence generally see PARA 349 note 5.

3 The reference in the text to a social responsibility provision of a code is a reference to a provision identified by a code as being included in pursuance of the Gambling Act 2005 s 24(2) (see PARA 337): s 82(2)(b).

4 Issued under the Gambling Act 2005 s 24: see PARA 337.

5 Gambling Act 2005 s 82(1). As to the Gambling Commission see PARA 4.

6 Issued under the Gambling Act 2005 ss 75, 77 or 78: see PARAS 357-358.

7 As to the Secretary of State see PARA 2.

8 Gambling Act 2005 s 82(3).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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363. Mandatory condition requiring the return of stakes to children.

Except with regard to the use of a category D gaming machine¹ or participation in equal chance gaming² at a licensed family entertainment centre³, an operating licence⁴ must be subject to the condition that if the licensee⁵ becomes aware that a child⁶ or young person⁷ is using or has used facilities for gambling⁸ provided⁹ in reliance on the licence, the licensee:

- 1026 (1) must return any money paid in respect of the use of those facilities, whether by way of fee, stake¹⁰ or otherwise, by the child or young person as soon as is reasonably practicable; and
- 1027 (2) may not give a prize¹¹ to the child or young person¹².

That condition has effect despite any contract or other agreement and despite any rule of law, and does not enable a licensee to demand repayment of, and does not require a child or young person to return, a prize paid before the licensee becomes aware that the participant is a child or young person¹³.

In relation to participation in a lottery¹⁴ or football pools¹⁵, however, a reference to a child or young person in the above provisions is to be treated as a reference only to a child¹⁶.

A person who fails to comply with this mandatory condition commits an offence¹⁷.

1 As to the meaning of 'category D gaming machine' see PARA 552.

2 As to the meaning of 'equal chance gaming' see PARA 311 note 4.

3 See the Gambling Act 2005 s 83(2). In the Gambling Act 2005, 'licensed family entertainment centre' means premises in respect of which a family entertainment centre premises licence has effect: ss 238, 353(1). As to the meaning of 'family entertainment centre premises licence' see PARA 460 at head (4); and as to the meaning of 'premises' see PARA 311 note 5.

4 As to the meaning of 'operating licence' see PARA 349 note 2.

5 For these purposes, a reference to a licensee includes a reference to anyone employed or engaged by a licensee to perform an operational function within the meaning of the Gambling Act 2005 s 80 (see PARA 360 note 8): s 83(4)(a). As to the meaning of 'licensee' in relation to an operating licence generally see PARA 349 note 5.

6 As to the meaning of 'child' see PARA 331 note 2.

7 As to the meaning of 'young person' see PARA 353 note 5. See, however, the Gambling Act 2005 s 84(4)(b); and the text and notes 14-16.

8 As to the meaning of 'gambling' see PARA 308.

9 As to the meaning of 'providing facilities' for gambling see PARA 309.

10 As to the meaning of 'stake' see PARA 312 note 6.

11 For these purposes, 'prize' includes both a prize provided by a person organising gambling and winnings of money staked: Gambling Act 2005 s 83(5).

12 Gambling Act 2005 s 83(1).

13 Gambling Act 2005 s 83(3).

14 As to the meaning of 'lottery' see PARA 317.

15 'Football pools' means an arrangement whereby (1) people compete for prizes by forecasting the results of association football games; and (2) each entry to the competition must forecast the results of at least four games: Gambling Act 2005 s 353(1).

16 Gambling Act 2005 s 83(4)(b).

17 See the Gambling Act 2005 s 58; and PARA 632.

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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364. Conditions as to premises.

An operating licence¹ may not include a condition²:

- 1028 (1) requiring that the licensed activities³ be carried on at a specified place or class of place;
- 1029 (2) preventing the licensed activities from being carried on at a specified place or class of place; or
- 1030 (3) specifying premises⁴ on which the licensed activities may be carried on⁵.

It may, however, include a condition about:

- 1031 (a) the number of sets of premises on which the licensed activities may be carried on;
- 1032 (b) the number of persons for whom facilities may be provided⁶ on any premises where the licensed activities are carried on⁷.

An operating licence of any kind may authorise⁸ activities carried on in more than one place⁹.

1 As to the meaning of 'operating licence' see PARA 349 note 2.

2 ie whether attached by virtue of the Gambling Act 2005 ss 75, 77 or 78: see PARAS 357-358.

3 As to the meaning of 'the licensed activities' see PARA 354 note 3.

4 As to the meaning of 'premises' see PARA 311 note 5.

5 Gambling Act 2005 s 84(1)(a).

6 As to the meaning of 'providing facilities' for gambling see PARA 309.

7 Gambling Act 2005 s 84(1)(b).

8 As to the meaning of 'authorise' see PARA 349 note 5.

9 Gambling Act 2005 s 84(2).

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue)
PARA 196A.

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365. Conditions about equipment and gaming machines.

A condition attached¹ to an operating licence² may make provision about equipment³ used in connection with the licensed activities⁴. In particular, a condition attached by virtue of this provision may:

- 1033 (1) make provision about the number of pieces of equipment, other than equipment for playing bingo⁵, that may be used to provide facilities for gambling⁶;
- 1034 (2) make provision about the specification of equipment used to provide facilities for gambling⁷.

An operating licence may not include a condition⁸:

- 1035 (a) about the number or categories of gaming machine⁹ that may be made available for use in accordance with the licence;
- 1036 (b) that contradicts a provision of regulations as to categories of gaming machine¹⁰ or as to the use¹¹ or the supply, installation, adaptation, maintenance or repair of such machines¹²; or
- 1037 (c) of a kind prohibited by such regulations¹³.

It may, however, be subject to a condition¹⁴ that a specified gaming machine may not be made available for use in reliance on the licence if the Gambling Commission¹⁵ has notified the licensee¹⁶ in writing that the manufacture, supply, installation, adaptation, maintenance or repair of the machine either was not carried out in reliance on a gaming machine technical operating licence¹⁷ or did not comply with established¹⁸ standards¹⁹.

1 le by virtue of the Gambling Act 2005 ss 75, 77 or 78: see PARAS 357-358.

2 As to the meaning of 'operating licence' see PARA 349 note 2.

3 For these purposes, 'equipment' includes a computer, a device for the playing of a casino game, and any other piece of equipment (Gambling Act 2005 s 85(3)); but a gaming machine is not equipment for these purposes (s 85(4)). As to the meaning of 'casino game' see PARA 311; and as to the meaning of 'gaming machine' see ss 235, 353(1); and PARA 547. The Gambling Commission has published technical requirements in respect of bingo and casino equipment: see *Bingo and Casino Equipment Technical Requirements* (July 2008, Gambling Commission). Those requirements are available on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk.

4 Gambling Act 2005 s 85(1). As to the meaning of 'the licensed activities' see PARA 354 note 3.

5 As to the meaning of 'bingo' see PARA 349 note 8.

6 As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

7 Gambling Act 2005 s 85(2).

8 le whether attached by virtue of the Gambling Act 2005 ss 75, 77 or 78: see PARAS 357-358.

- 9 As to categories of gaming machine see PARAS 548-552.
- 10 Ie regulations under the Gambling Act 2005 s 236: see PARA 548.
- 11 Ie regulations under the Gambling Act 2005 s 240: see PARA 553.
- 12 Ie regulations under the Gambling Act 2005 s 241: see PARA 560.
- 13 Gambling Act 2005 s 86(1).
- 14 Ie whether imposed by virtue of the Gambling Act 2005 ss 75, 77 or 78: see PARAS 357-358.
- 15 As to the Gambling Commission see PARA 4.
- 16 As to the meaning of 'licensee' see PARA 349 note 5.
- 17 As to the meaning of 'gaming machine technical operating licence' see PARA 349 at head (8).
- 18 Ie established under or by virtue of the Gambling Act 2005 s 96: see PARA 375.
- 19 Gambling Act 2005 s 86(2).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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366. Prohibition of condition as to membership.

An operating licence¹ may not be subject to a condition²:

- 1038 (1) requiring facilities to be provided³ by, or used in the course of the activities of, a club or other body with membership; or
- 1039 (2) restricting the provision or use of facilities wholly or partly by reference to membership of a club or other body⁴.

1 As to the meaning of 'operating licence' see PARA 349 note 2.

2 ie whether by virtue of the Gambling Act 2005 ss 75, 77 or 78: see PARAS 357-358.

3 As to the meaning of 'providing facilities' for gambling see PARA 309.

4 Gambling Act 2005 s 87.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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367. Condition requiring the provision of information.

A condition attached¹ to an operating licence² may require the provision of information of a specified kind to the Gambling Commission³, or to another specified person or class of person⁴. Such a condition may, in particular:

- 1040 (1) relate to information about the use made of facilities provided⁵ in accordance with the operating licence;
- 1041 (2) require a person to provide any information that he suspects may:
61
- 92. (a) relate to the commission of an offence under the Gambling Act 2005⁶;
- 93. (b) relate to a breach of a rule applied by a sporting or other body; or
- 94. (c) lead to the making of an order⁷ voiding a bet⁸.
62

1. I.e. by virtue of the Gambling Act 2005 s 75 or s 78: see PARAS 357-358.

2. As to the meaning of 'operating licence' see PARA 349 note 2.

3. As to the Gambling Commission see PARA 4.

4. Gambling Act 2005 s 88(1).

5. As to the meaning of 'providing facilities' for gambling see PARA 309.

6. As to offences under the Gambling Act 2005 see PARA 615 et seq.

7. I.e. an order under the Gambling Act 2005 s 336: see PARA 328.

8. Gambling Act 2005 s 88(2).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(C) RULES FOR PARTICULAR KINDS OF LICENCE

368. Remote operating licences.

The following provisions apply¹ to a remote operating licence².

The Gambling Commission³ may establish, or provide for the establishment of, standards in respect of:

- 1042 (1) a system used for the generation of results in a virtual game, virtual race or other virtual event or process⁴ used in the course of remote gambling⁵;
- 1043 (2) any other aspect of the process of remote gambling⁶.

In particular, the Commission may:

- 1044 (a) provide for the enforcement of standards by the attachment of conditions⁷;
- 1045 (b) make arrangements with any person for the establishment of standards;
- 1046 (c) make arrangements with any person for the administration of tests of compliance with standards;
- 1047 (d) for the purpose of considering whether a condition⁸ has been complied with, require the licensee⁹ under a remote licence to submit to a test in accordance with arrangements made under head (c) above and to produce specified evidence of the result of the test;
- 1048 (e) for the purpose of considering whether to grant an application with regard to an operating licence¹⁰, require a licensee under a remote licence or an applicant for a remote licence to submit to a test in accordance with arrangements made under head (c) above and to produce specified evidence of the result of the test¹¹.

Standards established under heads (a) to (e) above may, in particular, be expressed:

- 1049 (i) by reference to the opinion of a specified person or class of persons;
- 1050 (ii) by reference to a specified process or piece of equipment¹².

¹ This is without prejudice to the generality of the Gambling Act 2005 ss 75, 77, 78 (see PARAS 357-358): s 89(7).

² Gambling Act 2005 s 89(1). As to the meaning of 'remote operating licence' see PARA 351.

³ As to the Gambling Commission see PARA 4.

⁴ As to the meaning of 'virtual game, virtual race or other virtual event or process' see PARA 350 note 8.

⁵ As to the meaning of 'remote gambling' see PARA 308.

⁶ Gambling Act 2005 s 89(4).

7 le under the Gambling Act 2005 s 75 or s 77: see PARA 357. The Gambling Commission has published standards relevant to remote gambling: see *Remote Gambling and Software Technical Standards* (June 2007, Gambling Commission) set out in Paterson's Licensing Acts (116th Edn, 2008) at para 3.2410. Those standards are also published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk.

8 le under the Gambling Act 2005 s 75 or s 77: see PARA 357.

9 As to the meaning of 'licensee' see PARA 349 note 5.

10 le an application under the Gambling Act 2005 Pt 5 (ss 65-126, Sch 7): see PARAS 349 et seq, 369 et seq.

11 Gambling Act 2005 s 89(5).

12 Gambling Act 2005 s 89(6).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(i) Operating Licences/C. CONDITIONS ATTACHED TO LICENCES/(C) Rules for Particular Kinds of Licence/369. Casino operating licences.

369. Casino operating licences.

A casino operating licence¹ may be subject to a condition² restricting the class of casino game³ that may be made available⁴. It may also be subject to a condition⁵ specifying rules for the playing of a casino game or another game of chance⁶.

Where, in reliance on the operating licence, a game is played on a wholly automated gaming table⁷, the game must be capable of being played by four persons at the same time using four separate player positions⁸.

1 As to the meaning of 'casino operating licence' see PARA 349 at head (1).

2 Is whether imposed by virtue of the Gambling Act 2005 ss 75, 77 or 78: see PARAS 357-358.

3 As to the meaning of 'casino game' see PARA 311.

4 Gambling Act 2005 s 90(1).

5 Is a condition imposed by virtue of s 75 or s 77: see PARA 357.

6 Gambling Act 2005 s 90(2). As to the meaning of 'game of chance' see PARA 310.

7 As to the meaning of 'wholly automated gaming table' for these purposes see PARA 358 note 8.

8 See the Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, reg 2; and PARA 358.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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370. Bingo operating licences.

Regulations made by the Secretary of State¹ may provide for the attachment to a bingo operating licence² of a condition:

- 1051 (1) limiting amounts that may be staked³;
- 1052 (2) limiting the amount that may be charged by way of participation fee⁴;
- 1053 (3) limiting the amount or value of a prize or class of prize⁵;
- 1054 (4) requiring that at least a specified proportion of stakes⁶ be paid out by way of prizes⁷;
- 1055 (5) imposing requirements that are specific to games of bingo⁸ played on more than one set of premises⁹, whether facilities for the game are provided¹⁰ in accordance with one bingo operating licence or more than one¹¹.

Subject to that, a bingo operating licence may not be subject to a condition:

- 1056 (a) limiting the amount that may be accepted or charged by way of stakes;
- 1057 (b) limiting the amount that may be charged by way of participation fee;
- 1058 (c) restricting the nature, amount or value of prizes;
- 1059 (d) controlling the proportion of stakes paid out by way of prizes;
- 1060 (e) preventing the provision of prizes funded other than out of stakes;
- 1061 (f) preventing or limiting an arrangement whereby the fact that a prize is not won or claimed in one game of bingo increases the value of the prizes available in another game of bingo;
- 1062 (g) requiring a game of bingo to be played entirely on one set of premises; or
- 1063 (h) imposing requirements that are specific to games of bingo played on more than one set of premises, whether facilities for the game are provided in accordance with one bingo operating licence or more than one¹².

¹ ie regulations under the Gambling Act 2005 s 78: see PARA 358. As to the Secretary of State see PARA 2.

² As to the meaning of 'bingo operating licence' see PARA 349 at head (2).

³ Gambling Act 2005 s 91(1)(a).

⁴ Gambling Act 2005 s 91(1)(b). Regulations by virtue of s 91(1)(b) may, in particular, make different provision for different kinds of fee: s 91(3).

In the Gambling Act 2005, 'participation fee' means an amount paid in respect of entitlement to participate in gambling; and for that purpose (1) it is immaterial how a fee is described, whether a fee is payable in money or in money's worth, when and how a fee is payable and to whom a fee is payable; (2) a charge for admission to premises where gambling takes place is to be treated as a participation fee; (3) a membership subscription is not a participation fee (subject to s 344(2),(3)); and (4) a stake is not a participation fee: ss 344(1), 353(1). As to the meaning of 'gambling' see PARA 308. The Secretary of State may by regulations provide for a membership subscription to be treated as a participation fee in specified circumstances: s 344(2). He may also make regulations providing, in connection with the operation of a provision made by or by virtue of the 2005 Act in relation to a participation fee, for the apportionment of an amount which is payable partly in respect of entitlement to participate in gambling and partly in respect of another matter; and that provision may, in particular (a) provide for apportionment by a specified person; (b) provide for apportionment in accordance with

a specified formula or principle; (c) refer to the concept of reasonableness: s 344(4). At the date at which this volume states the law, no such regulations had been made.

For the purposes of s 279 (see PARA 668), a membership subscription is a participation fee: s 344(3).

For the prescribed limits see the Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, reg 3(3)-(5); and PARA 358 at head (2)(a)-(c).

5 Gambling Act 2005 s 91(1)(c). Provision made by virtue of s 91(1)(c) may define a class of prize (1) by reference to a game or a number of games; (2) by reference to a period of time; or (3) in any other way: s 91(4). For the prescribed limits see the Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, reg 3(6)-(9); and PARA 358 at head (2)(d)-(e).

6 As to the meaning of 'stake' see PARA 312 note 6.

7 Gambling Act 2005 s 91(1)(d).

8 As to the meaning of 'bingo' see PARA 349 note 8.

9 As to the meaning of 'premises' see PARA 311 note 5.

10 As to the meaning of 'providing facilities' for gambling see PARA 309.

11 Gambling Act 2005 s 91(1)(e).

12 Gambling Act 2005 s 91(2).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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371. General betting operating licences.

A general betting operating licence¹ must be subject to the condition that bets² may be accepted on behalf of the licensee³ only by the licensee, by a person employed by the licensee under a written contract of employment or by the holder⁴ of another general betting operating licence⁵.

A general betting operating licence must also contain an implied term permitting the use of postal services⁶ for the making of bets⁷; and the effect of the term so implied may not be disapplied or restricted by a condition attached under the statutory powers of the Gambling Commission⁸ or the Secretary of State⁹ to attach general or individual conditions¹⁰.

A general betting operating licence must be subject to the condition that nothing may be done in reliance on the licence in relation to a bet on the outcome of a lottery¹¹ which forms part of the National Lottery¹².

1 As to the meaning of 'general betting operating licence' see PARA 349 at head (3).

2 As to the meaning of 'bet' see PARA 312.

3 As to the meaning of 'licensee' see PARA 349 note 5.

4 As to the meaning of 'holder' see PARA 350 note 5.

5 Gambling Act 2005 s 92(1).

6 In the Gambling Act 2005, unless the context otherwise requires, a reference to postal services does not include a reference to facsimile transmission: s 353(2)(f).

7 Gambling Act 2005 s 92(2).

8 Ie a condition attached under the Gambling Act 2005 s 75 or s 77: see PARA 357. As to the Gambling Commission see PARA 4.

9 Ie a condition attached under the Gambling Act 2005 s 78: see PARA 358. As to the Secretary of State see PARA 2.

10 See the Gambling Act 2005 s 92(3).

11 As to the meaning of 'lottery' see PARA 317.

12 Gambling Act 2005 s 95(1)(a), (2). As to the National Lottery see PARA 686 et seq.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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372. Pool betting operating licences.

A pool betting operating licence¹ must be subject to the condition that bets² may be accepted on behalf of the licensee³ only:

- 1064 (1) by the licensee;
- 1065 (2) by a person employed by the licensee under a written contract of employment;
- 1066 (3) by the holder⁴ of another pool betting operating licence; or
- 1067 (4) by an agent or under an authorisation in accordance with the provisions⁵ set out below⁶.

A bet is accepted by a person ('the agent') on behalf of a licensee in accordance with this provision if:

- 1068 (a) the agent is authorised by the licensee in writing to accept bets on behalf of the licensee;
- 1069 (b) the agent is an adult⁷;
- 1070 (c) at the time of accepting the bet the agent is on a track⁸;
- 1071 (d) the bet is accepted in reliance on an occasional use notice⁹; and
- 1072 (e) the bet is in connection with a horse race or a dog race¹⁰.

The holder of a pool betting operating licence that authorises¹¹, whether expressly or impliedly, the provision of facilities¹² for football pools¹³ may in writing authorise an adult or young person:

- 1073 (i) to make documents or other facilities available in connection with the licensed activities¹⁴;
- 1074 (ii) to receive entries on behalf of the licensee;
- 1075 (iii) to receive payments on behalf of the licensee;
- 1076 (iv) to make payments of winnings¹⁵ on behalf of the licensee¹⁶.

Such an authorisation is to be treated for certain statutory purposes¹⁷ as if it were a pool betting operating licence, but has no effect in relation to any activity, entry or payment that relates partly to a football pool and partly to another form of gambling¹⁸. It may be issued on terms and conditions which may, in particular, include provision for payment by the person issuing the authorisation and provision for commission¹⁹. A condition of a pool betting operating licence²⁰ may make provision regulating or restricting the activities of persons so authorised²¹.

A pool betting operating licence must also contain an implied term permitting the use of postal services²² for the making of bets²³; and the effect of the term so implied may not be disapplied or restricted by a condition attached under the statutory powers of the Gambling Commission²⁴ or the Secretary of State²⁵ to attach general or individual conditions²⁶.

A pool betting operating licence must be subject to the condition that nothing may be done in reliance on the licence in relation to a bet on the outcome of a lottery²⁷ which forms part of the National Lottery²⁸.

- 1 As to the meaning of 'pool betting operating licence' see PARA 349 at head (4).
- 2 As to the meaning of 'bet' see PARA 312.
- 3 As to the meaning of 'licensee' see PARA 349 note 5.
- 4 As to the meaning of 'holder' see PARA 350 note 5.
- 5 le in accordance with the Gambling Act 2005 s 93(2) or (3): see the text and notes 7-16.
- 6 Gambling Act 2005 s 93(1).
- 7 'Adult' means an individual who is not a child or young person: Gambling Act 2005 s 353(1). As to the meaning of 'child' see PARA 331 note 2; and as to the meaning of 'young person' see PARA 353 note 5.
- 8 'Track' means a horse racecourse, dog track or other premises on any part of which a race or other sporting event takes place or is intended to take place; 'horse racecourse' means premises which are designed, used or adapted for use for horse racing; and 'dog track' means premises which are designed, used or adapted for use for dog racing: Gambling Act 2005 s 353(1). As to the meaning of 'premises' see PARA 311 note 5.
- 9 As to the meaning of 'occasional use notice' see the Gambling Act 2005 ss 39(2), 353(1); and PARA 616 note 20.
- 10 Gambling Act 2005 s 93(2). The Secretary of State may by order amend or repeal s 93(2)(e) (see head (e) in the text): s 93(9)(a). At the date at which this volume states the law, no such order had been made. As to the Secretary of State see PARA 2.
- 11 As to the meaning of 'authorises' see PARA 349 note 5.
- 12 As to the meaning of 'providing facilities' for gambling see PARA 309.
- 13 As to the meaning of 'football pools' see PARA 363 note 15.
- 14 As to the meaning of 'the licensed activities' see PARA 354 note 3.
- 15 Except where the context otherwise requires, a reference to paying winnings in relation to a bet includes a reference to providing a prize in money's worth: Gambling Act 2005 s 353(2)(e). As to the meaning of 'winnings' see PARA 312 note 6; and as to the meaning of 'prize' see PARA 312 note 10.
- 16 Gambling Act 2005 s 93(3). The Secretary of State may by order amend s 93(3) so as to permit authorisation in relation to betting of a specified kind that relates to a sport but is not a football pool: s 93(9)(b). At the date at which this volume states the law, no such order had been made.
- 17 le for the purposes of the Gambling Act 2005 s 33: see PARA 615.
- 18 Gambling Act 2005 s 93(4). As to the meaning of 'gambling' see PARA 308.
- 19 Gambling Act 2005 s 93(5).
- 20 le whether attached by virtue of ss 75, 77 or 78: see PARAS 357-358.
- 21 Gambling Act 2005 s 93(6).
- 22 As to the meaning of 'postal services' see PARA 371 note 6.
- 23 Gambling Act 2005 s 93(7).
- 24 le under the Gambling Act 2005 s 75 or s 77: see PARA 357. As to the Gambling Commission see PARA 4.
- 25 le under the Gambling Act 2005 s 78: see PARA 358.
- 26 See the Gambling Act 2005 s 93(8).

27 As to the meaning of 'lottery' see PARA 317.

28 Gambling Act 2005 s 95(1)(b), (2). As to the National Lottery see PARA 686 et seq.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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373. Horserace pool betting operating licences.

The following provisions apply to a pool betting operating licence¹ which provides for them to apply².

The holder³ of a licence to which these provisions apply may in writing authorise a person to provide facilities⁴ for horserace pool betting⁵. Such an authorisation:

1077 (1) may be issued on terms and conditions which may, in particular, include provision for payment to or by the person issuing the authorisation and provision for agency or commission⁶;

1078 (2) is to be treated for certain statutory purposes⁷ as if it were a pool betting operating licence authorising the provision of facilities for horserace pool betting⁸.

A condition⁹ of a pool betting operating licence to which these provisions apply may make provision regulating or restricting the activities of persons so authorised¹⁰.

A pool betting operating licence to which these provisions apply must also contain an implied term permitting the use of postal services¹¹ for the making of bets¹²; and the effect of the term so implied may not be disapplied or restricted by a condition attached under the statutory powers of the Gambling Commission¹³ or the Secretary of State¹⁴ to attach general or individual conditions¹⁵.

The Secretary of State may by order repeal the above provisions¹⁶.

1 As to the meaning of 'pool betting operating licence' see PARA 349 at head (4).

2 Gambling Act 2005 s 94(1).

3 As to the meaning of 'holder' see PARA 350 note 5.

4 As to the meaning of 'providing facilities' for gambling see PARA 309.

5 Gambling Act 2005 s 94(2).

6 Gambling Act 2005 s 94(4).

7 Ie for the purposes of the Gambling Act 2005 s 33: see PARA 615.

8 Gambling Act 2005 s 94(3).

9 Ie whether attached by virtue of the Gambling Act 2005 ss 75, 77 or 78: see PARAS 357-358.

10 Gambling Act 2005 s 94(5).

11 As to the meaning of 'postal services' see PARA 371 note 6.

12 Gambling Act 2005 s 94(6). As to the meaning of 'bet' see PARA 312.

13 Ie under the Gambling Act 2005 s 75 or s 77: see PARA 357. As to the Gambling Commission see PARA 4.

14 Ie under the Gambling Act 2005 s 78: see PARA 358. As to the Secretary of State see PARA 2.

15 See the Gambling Act 2005 s 94(7).

16 Gambling Act 2005 s 94(8). At the date at which this volume states the law, no such order had been made.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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374. Betting intermediary operating licences.

A betting intermediary operating licence¹ must be subject to the condition that nothing may be done in reliance on the licence in relation to a bet on the outcome of a lottery² which forms part of the National Lottery³.

1 As to the meaning of 'betting intermediary operating licence' see PARA 349 at head (5).

2 As to the meaning of 'lottery' see PARA 317.

3 Gambling Act 2005 s 95(1)(c), (2). As to the National Lottery see PARA 686 et seq.

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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375. Gaming machine technical operating licences; establishment and enforcement of standards.

The Gambling Commission¹ may establish, or provide for the establishment of, standards in respect of the manufacture, supply, installation, adaptation, maintenance or repair of gaming machines² or parts of gaming machines³. Such standards:

- 1079 (1) may, in particular, be expressed:
 - 63 95. (a) by reference to the opinion of a specified person or class of persons;
 - 96. (b) by reference to a specified process or class of machine⁴;
- 64 1080 (2) may operate by reference to regulations under Part 10 of the Gambling Act 2005⁵ and may not make provision which is inconsistent with a provision of such regulations⁶;
- 1081 (3) may, in particular, make provision, which may include provision designed to discourage repetitive play or to protect children⁷ or other vulnerable persons from harm, about:
 - 65 97. (a) the nature of a game that a machine is designed to be used to play;
 - 98. (b) the way in which the results of a game are to be determined or presented;
 - 99. (c) the nature of images or information displayed by or on a machine⁸.
- 66

In particular, the Commission may⁹:

- 1082 (i) provide for the enforcement of standards by the attachment of conditions¹⁰;
- 1083 (ii) make arrangements with any person for the establishment of standards;
- 1084 (iii) make arrangements with any person for the administration of tests of compliance with standards;
- 1085 (iv) for the purpose of considering whether a condition¹¹ has been complied with, require the holder¹² of a gaming machine technical operating licence¹³ to submit to a test in accordance with arrangements made under head (iii) above and to produce specified evidence of the result of the test;
- 1086 (v) for the purpose of considering whether to grant an application in relation to an operating licence¹⁴, require the holder of or an applicant for a gaming machine technical operating licence to submit to a test in accordance with arrangements made under head (iii) above and to produce specified evidence of the result of the test¹⁵.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547.

3 Gambling Act 2005 s 96(1). The Gambling Commission has published many machine standards and other relevant documents: these are set out in Paterson's Licensing Acts (116th Edn, 2008) at para 3.2520 et seq.

They are also published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk.

- 4 Gambling Act 2005 s 96(5).
- 5 Ie regulations under the Gambling Act 2005 Pt 10 (ss 235-251, Sch 10): see PARA 547 et seq.
- 6 Gambling Act 2005 s 96(2).
- 7 As to the meaning of 'child' see PARA 331 note 2.
- 8 Gambling Act 2005 s 96(3).
- 9 The Gambling Act 2005 s 96 is without prejudice to the generality of ss 75, 77, 78 (powers to impose conditions: see PARAS 357-358): s 96(6).
- 10 Ie under the Gambling Act 2005 s 75 or s 77: see PARA 357.
- 11 See note 10.
- 12 As to the meaning of 'holder' see PARA 350 note 5.
- 13 As to the meaning of 'gaming machine technical operating licence' see PARA 349 at head (8).
- 14 Ie an application under the Gambling Act 2005 Pt 5 (ss 65-126, Sch 7): see PARAS 349 et seq, 376 et seq.
- 15 Gambling Act 2005 s 96(4).

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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376. Gambling software operating licences; establishment and enforcement of standards.

The Gambling Commission¹ may establish, or provide for the establishment of, standards in respect of the manufacture, supply, installation² or adaptation of gambling software³. Standards so established may, in particular, be expressed:

- 1087 (1) by reference to the opinion of a specified person or class of persons;
- 1088 (2) by reference to a specified process or description of software⁴.

In particular, the Commission may⁵:

- 1089 (a) provide for the enforcement of standards by the attachment of conditions⁶;
- 1090 (b) make arrangements with any person for the establishment of standards;
- 1091 (c) make arrangements with any person for the administration of tests of compliance with standards;
- 1092 (d) for the purpose of considering whether a condition⁷ has been complied with, require the holder⁸ of a gambling software operating licence⁹ to submit to a test in accordance with arrangements made under head (c) above and to produce specified evidence of the result of the test;
- 1093 (e) for the purpose of considering whether to grant an application in relation to an operating licence¹⁰, require the holder of, or an applicant for, a gambling software operating licence to submit to a test in accordance with arrangements made under head (c) above and to produce specified evidence of the result of the test¹¹.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'installing computer software' see PARA 349 note 18.

3 Gambling Act 2005 s 97(1). As to the meaning of 'gambling software' see PARA 349 note 18. The Gambling Commission has published technical standards for gambling software: see *Remote Gambling and Software Technical Standards* (June 2007, Gambling Commission) set out in Paterson's Licensing Acts (116th Edn, 2008) at para 3.2410. Those standards are also published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk.

4 Gambling Act 2005 s 97(3).

5 The Gambling Act 2005 s 97 is without prejudice to the generality of ss 75, 77, 78 (see PARAS 357-358): s 97(4).

6 Ie under the Gambling Act 2005 s 75 or s 77: see PARA 357.

7 See note 6.

8 As to the meaning of 'holder' see PARA 350 note 5.

9 As to the meaning of 'gambling software operating licence' see PARA 349 at head (9).

10 Ie an application under the Gambling Act 2005 Pt 5 (ss 65-126, Sch 7): see PARAS 349 et seq, 377 et seq.

11 Gambling Act 2005 s 97(2).

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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377. Lottery operating licences; in general.

A lottery operating licence¹:

- 1094 (1) may be issued only to a non-commercial society², a local authority³ or a person proposing to act as external lottery manager⁴ on behalf of a non-commercial society or a local authority⁵;
- 1095 (2) may authorise:
 - 67 100. (a) promotion generally or only specified promoting activities;
 - 101. (b) the promotion of lotteries⁶ generally or only the promotion of lotteries of a specified kind or in specified circumstances;
 - 102. (c) action as an external lottery manager, in which case it is known as a 'lottery manager's operating licence'⁷;
- 68 1096 (3) must permit the delivery of lottery tickets⁸ by post⁹; and the effect of the term so implied may not be disapplied or restricted by a condition attached under the statutory powers of the Gambling Commission¹⁰ or the Secretary of State¹¹ to attach general or individual conditions¹².

In issuing a lottery operating licence the Commission may attach a condition¹³ preventing, restricting or controlling the use of a rollover¹⁴; and in issuing a lottery operating licence to a society or authority the Commission:

- 1097 (i) may attach a condition¹⁵ requiring that the society or authority ensure that all the arrangements for the lottery are made by the holder¹⁶ of a lottery manager's operating licence; and
- 1098 (ii) may, if it attaches a condition under head (i) above, issue the lottery licence to the society or authority without consideration of the applicant's suitability¹⁷ to carry on the licensed activities¹⁸.

1 As to the meaning of 'lottery operating licence' see PARA 349 at head (10).

2 For the purposes of the Gambling Act 2005 a society is non-commercial if it is established and conducted (1) for charitable purposes; (2) for the purpose of enabling participation in, or of supporting, sport, athletics or a cultural activity; or (3) for any other non-commercial purpose other than that of private gain: ss 19(1), 353(1). 'Charitable purposes' means, in relation to England and Wales, purposes which are exclusively charitable according to the law of England and Wales: s 19(2)(a). The provision of a benefit to one or more individuals is not a provision for the purpose of private gain for these purposes if made in the course of the activities of a society that is a non-commercial society by virtue of head (1) or head (2) above: s 19(3). 'Society' includes a branch or section of a society: s 353(1).

3 For these purposes, 'local authority' means: (1) in relation to England, a district council, a county council, a parish council, a London borough council, the Common Council of the City of London, and the Council of the Isles of Scilly; (2) in relation to Wales, a county council, a county borough council, and a community council: Gambling Act 2005 s 98(7)(a), (b).

4 A person acts as an external lottery manager for the purposes of the Gambling Act 2005 if he makes arrangements for a lottery on behalf of a society or authority of which he is not (1) a member; (2) an officer; or (3) an employee under a contract of employment: ss 257, 353(1).

5 Gambling Act 2005 s 98(1).

6 As to the meaning of 'promoting a lottery' see the Gambling Act 2005 ss 252, 353(2)(h); and PARA 643.

7 Gambling Act 2005 s 98(2).

8 For the purposes of the Gambling Act 2005, a document or article is a lottery ticket if it confers, or can be used to prove, membership of a class for the purpose of the allocation of prizes in a lottery: ss 253(1), 353(1). As to the meaning of 'prize' see PARA 317 note 4.

9 Gambling Act 2005 s 98(4).

10 Ie under the Gambling Act 2005 s 75 or s 77: see PARA 357. As to the Gambling Commission see PARA 4.

11 Ie under the Gambling Act 2005 s 78: see PARA 358. As to the Secretary of State see PARA 2.

12 See the Gambling Act 2005 s 98(5).

13 See note 10.

14 Gambling Act 2005 s 98(6). In the Gambling Act 2005, 'rollover' in relation to a lottery means an arrangement whereby the fact that a prize is not allocated or claimed in one lottery increases the value of the prizes available for allocation in another lottery: ss 256(1), 353(1). For the purposes of that Act, where prizes are allocated by means of more than one draw (1) the draws together constitute a single lottery if the class of persons among whom prizes are allocated is (and, by virtue of arrangements for the sale or supply of tickets, must be) the same in the case of each draw; and (2) otherwise, the arrangements for each draw constitute a separate lottery: s 256(2). 'Draw', in relation to a lottery, includes any process by which a prize in the lottery is allocated: ss 255, 353(1).

15 See note 10.

16 As to the meaning of 'holder' see PARA 350 note 5.

17 Ie without consideration of the matters specified in the Gambling Act 2005 s 70(1)(b) (see PARA 355): s 98(3)(b).

18 See the Gambling Act 2005 s 98(3).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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378. Mandatory conditions of lottery operating licence.

In issuing a lottery operating licence¹ to a non-commercial society² or to a local authority³ the Gambling Commission⁴ must attach conditions⁵ for the purpose of achieving the requirements specified below⁶. Those requirements are that:

- 1099 (1) at least 20 per cent⁷ of the proceeds of any lottery⁸ promoted⁹ in reliance on the licence are applied:
- 69
- 103. (a) in the case of a licence issued to a non-commercial society, to a purpose for which the promoting society is conducted; and
- 104. (b) in the case of a licence issued to a local authority, for a purpose for which the authority has power to incur expenditure¹⁰;
- 70
- 1100 (2) the proceeds of any lottery promoted in reliance on the licence may not exceed £2 million¹¹ and the aggregate of the proceeds of lotteries promoted wholly or partly in a calendar year in reliance on the licence may not exceed £10 million¹²;
- 1101 (3) it must not be possible for the purchaser of a ticket in a lottery promoted in reliance on the licence to win by virtue of that ticket, whether in money, money's worth, or partly the one and partly the other, more than £25,000, or, if more, 10 per cent of the proceeds of the lottery¹³; and any rollover¹⁴ must comply with this requirement¹⁵;
- 1102 (4) where a person purchases a lottery ticket¹⁶ in a lottery promoted by a non-commercial society in reliance on the licence he receives a document¹⁷ which:
- 71
- 105. (a) identifies the promoting society;
- 106. (b) states the name and address of a member of the society who is designated, by persons acting on behalf of the society, as having responsibility within the society for the promotion of the lottery; and
- 107. (c) either states the date of the draw¹⁸ (or each draw) in the lottery, or enables the date of the draw (or each draw) in the lottery to be determined¹⁹;
- 72
- 1103 (5) the price payable for purchasing each ticket in a lottery promoted in reliance on the licence:
- 73
- 108. (a) must be the same;
- 109. (b) must be shown on the ticket or in a document received by the purchaser; and
- 110. (c) must be paid to the promoter of the lottery before any person is given a ticket or any right in respect of membership of the class among whom prizes²⁰ are to be allocated²¹;
- 74
- 1104 (6) membership of the class among whom prizes in any lottery promoted in reliance on the licence are allocated may not be dependent on making any payment apart from payment of the price of a ticket²².

Where:

- 1105 (i) conditions are attached to a lottery operating licence in accordance with the above provisions; and
- 1106 (ii) the lottery operating licence is also subject to a condition²³ requiring arrangements for the lottery to be made by the holder²⁴ of a lottery manager's operating licence²⁵,

the conditions specified in head (i) above attach to the lottery manager's operating licence in so far as it is relied upon in pursuance of the condition specified in head (ii) above²⁶.

Nothing in the above provisions prevents the Commission from attaching a condition to a lottery operating licence of a kind similar to but more onerous than a requirement of heads (1) to (6) above²⁷.

1 As to the meaning of 'lottery operating licence' see PARA 349 at head (10).

2 As to the meaning of 'non-commercial society' see PARA 377 note 2.

3 As to the meaning of 'local authority' for these purposes see PARA 377 note 3.

4 As to the Gambling Commission see PARA 4.

5 I.e. under the Gambling Act 2005 s 75 or s 77: see PARA 357.

6 Gambling Act 2005 s 99(1).

7 The Secretary of State may by order vary a monetary amount or a percentage in the Gambling Act 2005 s 99: s 99(11). At the date at which this volume states the law, no such order had been made. As to the Secretary of State see PARA 2.

8 In the Gambling Act 2005, a reference to the proceeds of a lottery is a reference to the aggregate of amounts paid in respect of the purchase of lottery tickets (ss 254(1), 353(1)); and a reference to purchase of a lottery ticket includes a reference to any action by a person as a result of which he becomes a member of the class among whom prizes in a lottery are to be allocated (ss 253(3), 253(2)(k)).

9 As to the meaning of 'promoting a lottery' see the Gambling Act 2005 ss 252, 353(2)(h); and PARA 643.

10 Gambling Act 2005 s 99(2).

11 See note 7.

12 Gambling Act 2005 s 99(3).

13 Gambling Act 2005 s 99(4).

14 As to the meaning of 'rollover' see PARA 377 note 14.

15 See note 13.

16 As to the meaning of 'lottery ticket' see PARA 377 note 8.

17 For the purpose of the Gambling Act 2005 s 99(5), (6) (see heads (4)-(5) in the text), a reference to a person receiving a document includes, in particular, a reference to a message being sent or displayed to him electronically in a manner which enables him, without incurring significant expense or delay, to retain the message electronically, or to print it: s 99(7).

18 As to the meaning of 'draw' see PARA 377 note 14.

19 Gambling Act 2005 s 99(5).

20 As to the meaning of 'prize' see PARA 317 note 4.

21 Gambling Act 2005 s 99(6).

- 22 Gambling Act 2005 s 99(8).
- 23 le under the Gambling Act 2005 s 98(3)(a): see PARA 377.
- 24 As to the meaning of 'holder' see PARA 350 note 5.
- 25 As to the meaning of 'lottery manager's operating licence' see PARA 377 at head (2).
- 26 Gambling Act 2005 s 99(9).
- 27 Gambling Act 2005 s 99(10).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

378 Mandatory conditions of lottery operating licence

NOTES 11, 12 - For '£2 million' read '£4 million': Gambling Act 2005 s 99(3) (amended by SI 2009/207).

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D. MAINTENANCE OF LICENCES

(A) ANNUAL FEES, REGISTER OF LICENCES AND REPLACEMENT OF LICENCES

379. Annual fee for licence.

The holder¹ of an operating licence²:

- 1107 (1) must pay a first annual fee³ to the Gambling Commission⁴ within such period after the issue of the licence as may be prescribed⁵; and
- 1108 (2) must pay an annual fee to the Commission before each anniversary of the issue of the licence⁶.

Head (2) above does not, however, apply in relation to an anniversary of the issue of a licence on or immediately before which the licence ceases⁷ to have effect⁸.

1 As to the meaning of 'holder' see PARA 350 note 5.

2 As to the meaning of 'operating licence' see PARA 349 note 2.

3 For these purposes, 'annual fee' means a fee of such amount as may be prescribed; and 'prescribed' means prescribed by the Secretary of State by regulations: Gambling Act 2005 s 100(2). Regulations under s 100 may, in particular, make different provision for different kinds of operating licence or different circumstances: s 100(3). As to the Secretary of State see PARA 2.

For the prescribed annual fees for non-remote operating licences see the Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006, SI 2006/3284, reg 8, Sch 3 (reg 8 amended by SI 2007/1791; the Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006, SI 2006/3284, Sch 3 substituted by SI 2008/1803). Subject to certain exceptions, the first annual fee payable in respect of a non-remote operating licence is 75% of the usual annual fee payable in respect of that licence: see the Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006, SI 2006/3284, reg 8(3) (as so amended); for the exceptions see reg 8(4)-(6) (added by SI 2007/1791). Annual fees are prescribed separately for non-remote supplementary operating licences. The first annual fee for such a licence is £281.25; and the annual fee for such a licence is £375: Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006, SI 2006/3284, reg 4A(2), (3) (added by SI 2008/1803). As to the meaning of 'supplementary operating licence' see PARA 353 note 15.

For the prescribed annual fees for remote operating licences see the Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006, SI 2006/3284, reg 12, Sch 6 (Sch 6 substituted by SI 2008/1803). There is generally no reduction in respect of the first annual fee for remote operating licences. Annual fees are prescribed separately for remote supplementary operating licences. The first annual fee for such a licence is £281.25 and the annual fee for such a licence is £375: Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006, SI 2006/3284, reg 14A(2), (3) (added by SI 2008/1803). They are also prescribed separately for remote general betting (limited) operating licences. The first annual fee for a remote general betting (limited) operating licence is £1,500; and the annual fee for such a licence is £1,500: Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006, SI 2006/3284, reg 13(2). Regulation 14(2)-(5) sets out four different types of ancillary remote operating licence. The first annual fee for an ancillary remote operating licence is £25 and the annual fee for an ancillary remote operating licence is £25: reg 14(7), (8).

As to combined operating licences see reg 15 (amended by SI 2008/1803); and for annual fees for combined operating licences see the Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006, SI 2006/3284, reg 17. There is a 75% reduction for the first annual fee for a non-remote combined operating

licence (see reg 17(3)(a)) but none for a remote combined operating licence (see reg 17(3)(b)). As to annual fees for holders of two operating licences see reg 21 (amended by SI 2008/1803).

4 As to the Gambling Commission see PARA 4.

5 Gambling Act 2005 s 100(1)(a). The first annual fee for a licence must be paid within 30 days of the date on which the licence was issued: Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006, SI 2006/3284, reg 26.

6 Gambling Act 2005 s 100(1)(b).

7 le by virtue of the Gambling Act 2005 s 111: see PARA 389.

8 Gambling Act 2005 s 100(4).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

379 Annual fee for licence

NOTE 3--SI 2006/3284 regs 8, 12, 17, 21 amended, Schs 3, 6 substituted, regs 8A (application, annual and first annual fees for non-remote general betting (standard) operating licences) and 17A (annual fees and first annual fees for certain combined remote licences) added: SI 2009/1837.

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380. Register of operating licences.

The Gambling Commission¹ must:

- 1109 (1) maintain a register of operating licences² containing such details of and relating to each licence as the Commission thinks appropriate;
- 1110 (2) make the register available for inspection by members of the public at all reasonable times; and
- 1111 (3) make arrangements for the provision of a copy of an entry in the register to a member of the public on request³.

The Commission may, however, refuse to provide access to the register or to provide a copy of an entry unless the person seeking access or a copy pays a fee specified by the Commission⁴. The Commission may not specify such a fee which exceeds the reasonable cost of providing the service sought; but in calculating the cost of providing a service to a person the Commission may include a reasonable share of expenditure which is referable only indirectly to the provision of that service⁵.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'operating licence' see PARA 349 note 2.

3 Gambling Act 2005 s 106(1).

4 Gambling Act 2005 s 106(2).

5 Gambling Act 2005 s 106(3).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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381. Gambling Commission's power to issue copy of lost, stolen or damaged licence.

The Gambling Commission¹ may make arrangements to issue to a licensee² on request a copy of an operating licence³ which has been lost, stolen or damaged⁴. The arrangements may, in particular, include a requirement:

- 1112 (1) for the payment of a fee not exceeding such sum as may be prescribed for these purposes by the Secretary of State⁵ by regulations⁶;
- 1113 (2) in the case of a licence being lost or stolen, that the licensee has complied with specified arrangements for reporting the loss or theft to the police⁷.

A copy of a licence issued under these provisions is to be treated as if it were the licence⁸.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'licensee' see PARA 349 note 5.

3 As to the meaning of 'operating licence' see PARA 349 note 2.

4 Gambling Act 2005 s 107(1).

5 As to the Secretary of State see PARA 2.

6 Gambling Act 2005 s 107(2)(a). The fee for issuing a copy of an operating licence under s 107 must not exceed £25: Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006, SI 2006/3284, reg 25.

7 Gambling Act 2005 s 107(2)(b).

8 Gambling Act 2005 s 107(3).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(B) LICENCE HOLDER'S DUTIES

382. Licence holder's duty to produce licence.

A constable¹ or enforcement officer² may require the holder³ of an operating licence⁴ to produce it to the constable or enforcement officer within a specified period⁵. A licensee⁶ commits an offence if he fails without reasonable excuse to comply with such a requirement⁷.

1 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

2 As to the meaning of 'enforcement officer' see PARA 342 note 7.

3 As to the meaning of 'holder' see PARA 350 note 5.

4 As to the meaning of 'operating licence' see PARA 349 note 2.

5 Gambling Act 2005 s 108(1).

6 As to the meaning of 'licensee' see PARA 349 note 5.

7 Gambling Act 2005 s 108(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 108(3). As to the standard scale see PARA 17 note 21.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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383. Licence holder's notification duties if convicted of offence.

If the holder¹ of an operating licence² is convicted of an offence by or before a court in Great Britain³, or of a relevant offence⁴ by or before a court outside Great Britain, he must as soon as is reasonably practicable notify⁵ the Gambling Commission⁶ of his conviction⁷ and of any sentence passed in respect of it⁸.

If the holder of an operating licence is convicted of a relevant offence by or before a court in Great Britain he must immediately inform the court that he is the holder of an operating licence⁹.

A person commits an offence if he fails without reasonable excuse to comply with any of these requirements¹⁰.

1 As to the meaning of 'holder' see PARA 350 note 5.

2 As to the meaning of 'operating licence' see PARA 349 note 2.

3 As to the meaning of 'Great Britain' see PARA 16 note 8.

4 As to the meaning of 'relevant offence' see PARA 353 note 11.

5 As to the method of notification see PARA 356 note 5.

6 As to the Gambling Commission see PARA 4.

7 As to the meaning of 'conviction' see PARA 355 note 22.

8 Gambling Act 2005 s 109(1), (3).

9 Gambling Act 2005 s 109(2).

10 Gambling Act 2005 s 109(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 109(5). As to the standard scale see PARA 17 note 21.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(C) CHANGE OF CIRCUMSTANCE OR CORPORATE CONTROL

384. Change of circumstance.

The Secretary of State¹ may make regulations requiring the holder² of an operating licence³:

- 1114 (1) to notify⁴ the Gambling Commission⁵ of any change of circumstance of a prescribed⁶ kind in relation to him or to a licensed activity⁷; and
- 1115 (2) to give the Commission prescribed details of the change⁸.

If a change of circumstance so notified falsifies information contained⁹ in the operating licence the notification must be accompanied by the prescribed fee, and by either the licence or an application to the Commission for the issue of a copy¹⁰ of the licence¹¹.

Where notification is accompanied by the licence, the Commission must make such alteration to the information contained in the licence as appears to it to be required by the change in circumstance, and must return the licence to the licensee¹². Where the notification is accompanied by an application for a copy of the licence, the Commission must, if it grants the application, issue the copy in a form which appears to the Commission to reflect the change in circumstance¹³.

The holder of an operating licence commits an offence if he fails without reasonable excuse to comply with regulations under these provisions¹⁴.

The above provisions do not prevent the imposition of a requirement to notify the Commission of a specified change of circumstance by way of the attachment of a condition to an operating licence¹⁵.

1 As to the Secretary of State see PARA 2.

2 As to the meaning of 'holder' see PARA 350 note 5.

3 As to the meaning of 'operating licence' see PARA 349 note 2.

4 As to the method of notification see PARA 356 note 5.

5 As to the Gambling Commission see PARA 4.

6 For these purposes, 'prescribed' means prescribed by regulations under the Gambling Act 2005 s 101: s 101(5).

7 As to the meaning of 'licensed activity' see PARA 354 note 3.

8 Gambling Act 2005 s 101(1). At the date at which this volume states the law, no such regulations had been made.

9 Ie in accordance with the Gambling Act 2005 s 66: see PARA 352.

10 Ie under the Gambling Act 2005 s 107: see PARA 381.

11 Gambling Act 2005 s 101(2).

12 Gambling Act 2005 s 101(3). As to the meaning of 'licensee' see PARA 349 note 5.

13 Gambling Act 2005 s 101(4).

14 Gambling Act 2005 s 101(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 101(7). As to the standard scale see PARA 17 note 21.

15 Gambling Act 2005 s 101(8). As to the Commission's power to attach conditions see ss 75, 77; and PARA 357.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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385. Change of corporate control.

The following provisions apply¹ where the holder² of an operating licence³ is a company limited by shares ('the company')⁴. If a person becomes a controller of the company⁵ ('the new controller'), the company must inform the Gambling Commission⁶ and must either surrender the operating licence⁷ or apply to the Commission for a determination that the operating licence is to continue to have effect⁸. Such an application may also be made in respect of a person who is expected to become a controller of a company⁹.

An application for such a determination must be accompanied by such information as the Commission may direct¹⁰ about the new controller, his interest in the company, and his interest in any company of which the company is a subsidiary¹¹. It must also be accompanied by the prescribed fee¹².

On considering such an application the Commission must:

- 1116 (1) make the determination sought, if satisfied that the Commission would have granted the operating licence to the licensee¹³ had the new controller been a controller of the company when the application for the operating licence was made; and
- 1117 (2) otherwise, revoke the operating licence¹⁴.

The Commission must as soon as is reasonably practicable inform an applicant of the Commission's decision and of the reasons for it¹⁵.

If the Commission becomes aware that a company has failed to comply with the duty to either surrender the licence or make an application for a determination¹⁶ within the period of five weeks beginning with the day on which the duty began to apply to the company, the Commission must revoke the relevant operating licence¹⁷. The Commission may, however, extend that five-week period either before it expires, or, if the relevant operating licence has not yet been revoked, after it expires¹⁸.

The Secretary of State¹⁹ may by regulations provide for the above provisions not to apply to the holder of a specified description of operating licence²⁰.

1 See, however, the text and notes 19-20.

2 As to the meaning of 'holder' see PARA 350 note 5.

3 As to the meaning of 'operating licence' see PARA 349 note 2.

4 Gambling Act 2005 s 102(1).

5 Ie within the meaning of the Financial Services and Markets Act 2000 s 422: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 591.

6 As to the Gambling Commission see PARA 4.

7 Ie under the Gambling Act 2005 s 113: see PARA 391.

8 Gambling Act 2005 s 102(2).

9 Gambling Act 2005 s 103(3).

10 In giving such a direction the Commission must have regard to normal commercial practices in relation to the confidentiality of information: Gambling Act 2005 s 103(5).

11 Gambling Act 2005 s 102(3). 'Subsidiary' means subsidiary within the meaning of the Companies Act 1985 s 736 (see **COMPANIES** vol 14 (2009) PARA 25); see the Gambling Act 2005 s 102(3)(c). Note that the Companies Act 1985 s 736 is prospectively repealed by the Companies Act 2006 Sch 16, and replaced by s 1159, as from a day to be appointed under s 1300(2); at the date at which this volume states the law, no such day had been appointed.

12 Gambling Act 2005 s 103(2). Regulations under s 103(2) may, in particular, provide for a reduction of fee where the application is a result of the merger of more than one company, or the division of a company: s 103(6). For the prescribed fee see the Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006, SI 2006/3284, regs 23-23B (reg 23 substituted, and regs 23A, 23B added, by SI 2008/1803).

13 As to the meaning of 'licensee' see PARA 349 note 5.

14 Gambling Act 2005 s 102(4). Revocation of an operating licence under s 102 is to be treated for all purposes (including the application of s 119) as revocation under s 119 (see PARA 397): s 103(7).

15 Gambling Act 2005 s 103(4).

16 Ie the duty under the Gambling Act 2005 s 102(2): see the text and notes 5-8.

17 Gambling Act 2005 s 102(5); and see note 14.

18 Gambling Act 2005 s 102(6).

19 As to the Secretary of State see PARA 2.

20 Gambling Act 2005 s 103(1).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

385 Change of corporate control

NOTE 11--Gambling Act 2005 s 102(3)(c), definition of 'subsidiary' amended: SI 2009/1941.

NOTE 12--SI 2006/3284 regs 23-23B amended: SI 2009/1837.

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(D) VARIATION AND AMENDMENT OF LICENCES

386. Application to vary licence.

The holder¹ of an operating licence² may apply to the Gambling Commission³ to vary the licence by:

- 1118 (1) adding, amending or removing a licensed activity⁴;
- 1119 (2) amending another detail of the licence; or
- 1120 (3) adding, amending or removing an individual condition attached⁵ to the licence⁶.

An application for variation must comply with the relevant requirements⁷ and be accompanied by the prescribed fee⁸. It must also be accompanied by a statement of the variation sought, and by either the licence to be varied, or a statement explaining why it is not reasonably practicable to produce the licence⁹.

The relevant statutory provisions¹⁰ apply in relation to an application for variation as they apply in relation to an application for a licence subject to these provisions¹¹ and with any other necessary modifications¹². Regulations¹³ which relate to an application for an operating licence may make:

- 1121 (a) provision which applies only in the case of an application for variation;
- 1122 (b) provision which does not apply in the case of an application for variation;
- 1123 (c) different provision in relation to an application for variation from that made in relation to an application for an operating licence;
- 1124 (d) different provision in relation to applications for variations of different kinds¹⁴.

A licence may not be varied under these provisions so as to authorise¹⁵ anyone other than the person to whom it was issued to provide facilities for gambling¹⁶. In granting an application for variation the Commission must specify a time when the variation is to begin to have effect, and may make transitional provision¹⁷.

1 As to the meaning of 'holder' see PARA 350 note 5.

2 As to the meaning of 'operating licence' see PARA 349 note 2.

3 As to the Gambling Commission see PARA 4.

4 As to the meaning of 'licensed activity' see PARA 354 note 3.

5 le under the Gambling Act 2005 s 77: see PARA 357.

6 See the Gambling Act 2005 s 104(1).

7 le the requirements of the Gambling Act 2005 s 69: see PARA 353.

8 See the Gambling Act 2005 s 104(3); and the text and notes 10-12. For the prescribed fee for the application see the Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006, SI 2006/3284, reg 24 (amended by SI 2008/1803).

9 Gambling Act 2005 s 104(5).

10 Ie the provisions of the Gambling Act 2005 Pt 5 (ss 65-126, Sch 7): see PARAS 349 et seq, 387 et seq.

11 Ie subject to the provisions of the Gambling Act 2005 s 104.

12 Gambling Act 2005 s 104(3). As to applications for licences see PARAS 353-356.

13 Ie regulations under the Gambling Act 2005 Pt 5.

14 Gambling Act 2005 s 104(4); and see note 8.

15 As to the meaning of 'authorise' see PARA 349 note 5.

16 Gambling Act 2005 s 104(2). As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

17 Gambling Act 2005 s 104(6).

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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387. Amendment of licences.

The Gambling Commission¹ may require the holder² of an operating licence³ to submit it to the Commission for the purpose of amendment to reflect:

- 1125 (1) a general variation of conditions⁴;
- 1126 (2) a change of circumstance which has been notified⁵;
- 1127 (3) the grant of an application for variation⁶;
- 1128 (4) the attachment of an additional condition, or the amendment of a condition⁷;
- 1129 (5) the grant of an application for renewal⁸;
- 1130 (6) anything done⁹ in relation to a personal licence¹⁰.

A licensee¹¹ must comply with such a requirement within the period of 14 days beginning with the day on which he receives notice¹² of the requirement¹³. A person commits an offence if he fails without reasonable excuse to comply with a requirement imposed under the above provisions¹⁴.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'holder' see PARA 350 note 5.

3 As to the meaning of 'operating licence' see PARA 349 note 2.

4 Ie under the Gambling Act 2005 s 75: see PARA 357. This is without prejudice to s 76(4)(c) (see PARA 357): s 105(5).

5 Ie under the Gambling Act 2005 s 101: see PARA 384.

6 Ie under the Gambling Act 2005 s 104: see PARA 386.

7 Ie under the Gambling Act 2005 s 117: see PARA 395.

8 Ie under the Gambling Act 2005 s 112: see PARA 390.

9 Ie under the Gambling Act 2005 Pt 6 (ss 127-139): see PARA 400 et seq.

10 Gambling Act 2005 s 105(1).

11 As to the meaning of 'licensee' see PARA 349 note 5.

12 As to the method of giving notice see PARA 356 note 5.

13 Gambling Act 2005 s 105(2).

14 Gambling Act 2005 s 105(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 105(4). As to the standard scale see PARA 17 note 21.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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E. DURATION OF LICENCES

388. Indefinite duration.

An operating licence¹ continues to have effect unless and until it ceases to do so in accordance with:

- 1131 (1) a determination² by the Gambling Commission³ limiting the duration of operating licences or of a specified class of operating licence; or
- 1132 (2) the statutory provisions with regard to surrender⁴, lapse⁵, forfeiture⁶, suspension⁷ or revocation⁸.

- 1 As to the meaning of 'operating licence' see PARA 349 note 2.
- 2 Ie a determination under the Gambling Act 2005 s 111: see PARA 389.
- 3 As to the Gambling Commission see PARA 4.
- 4 Ie the Gambling Act 2005 s 113: see PARA 391.
- 5 Ie the Gambling Act 2005 s 114: see PARA 392.
- 6 Ie the Gambling Act 2005 s 115: see PARA 393.
- 7 Ie the Gambling Act 2005 s 118: see PARA 396.
- 8 Gambling Act 2005 s 110. As to revocation see s 119; and PARA 397.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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389. Gambling Commission's power to limit duration of licences.

The Gambling Commission¹ may determine that operating licences² are, or a specified class of operating licence is, to cease to have effect at the end of a specified period, unless terminated³ earlier⁴. The period so specified must begin:

- 1133 (1) in the case of an operating licence issued after the determination, with the date on which the licence is issued; and
- 1134 (2) in the case of an operating licence issued before the determination, with the date of the determination⁵.

The Commission may:

- 1135 (a) determine different periods for operating licences authorising⁶ different classes of activity, but may not otherwise determine different periods for different licences;
- 1136 (b) alter a determination; but such an alteration is to have effect only in relation to licences issued after the alteration; and
- 1137 (c) revoke a determination, in which case the determination ceases to have effect in relation to licences already issued⁷.

The Commission must publish any such determination as part of a statement or revised statement⁸ of principles for licensing and regulation⁹.

In October 2006 the Commission stated that it had no current intention of exercising its power under the above provisions¹⁰.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'operating licence' see PARA 349 note 2.

3 In accordance with the Gambling Act 2005 ss 113, 114, 115 or 119: see PARAS 391-393, 397.

4 Gambling Act 2005 s 111(1).

5 Gambling Act 2005 s 111(2).

6 As to the meaning of 'authorise' see PARA 349 note 5.

7 Gambling Act 2005 s 111(3).

8 In a statement or revised statement under the Gambling Act 2005 s 23: see PARA 336.

9 Gambling Act 2005 s 111(4).

10 See *Statement of Principles for Licensing and Regulation* (December 2006, Gambling Commission) para 3.18. That statement is set out in Paterson's Licensing Acts (116th Edn, 2008) at para 3.2040. It is also published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk.

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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390. Renewal of licence.

Where an operating licence¹ is subject to a determination limiting its duration², the licensee³ may apply to the Gambling Commission⁴ for renewal of the licence⁵. The relevant statutory provisions⁶ apply in relation to an application for renewal as they apply in relation to an application for a licence, subject to the following provisions and with any other necessary modifications⁷.

An application for renewal of an operating licence may be made only during the period which begins three months before the date on which the licence would otherwise expire⁸ and ends one month before the date on which the licence would otherwise expire⁹. It must, in addition to anything otherwise required¹⁰, be accompanied by either the licence to be renewed, or a statement explaining why it is not reasonably practicable to submit the licence to be renewed¹¹.

Where an application for renewal of an operating licence is awaiting determination on the date when it would expire¹², then unless it otherwise ceases to have effect¹³ the licence continues to have effect until the application is determined¹⁴.

The Commission must determine the period during which a renewed operating licence is to have effect¹⁵; and it may:

- 1138 (1) determine different periods for operating licences authorising different classes of activity, but may not otherwise determine different periods for different licences¹⁶;
- 1139 (2) alter a determination; but an alteration is to have effect only in relation to licences issued after the alteration¹⁷.

The Commission must publish any such determination as part of a statement or revised statement¹⁸ of principles for licensing and regulation¹⁹.

1 As to the meaning of 'operating licence' see PARA 349 note 2.

2 Ie a determination under the Gambling Act 2005 s 111: see PARA 389.

3 As to the meaning of 'licensee' see PARA 349 note 5.

4 As to the Gambling Commission see PARA 4.

5 Gambling Act 2005 s 112(1).

6 Ie the Gambling Act 2005 Pt 5 (ss 65-126, Sch 7): see PARAS 349 et seq, 391 et seq.

7 Gambling Act 2005 s 112(2). As to applications for licences see PARAS 353-356. A direction or regulations under Pt 5 which relates or relate to an application for an operating licence may make (1) provision which applies only in the case of an application for renewal; (2) provision which does not apply in the case of an application for renewal; (3) different provision in relation to an application for renewal from that made in relation to an application for an operating licence: s 112(5).

8 Ie expire by virtue of the Gambling Act 2005 s 111: see PARA 389.

9 Gambling Act 2005 s 112(3). The Secretary of State may by order amend s 112(3) so as to substitute a different time for a time specified: s 112(8). At the date at which this volume states the law, no such regulations had been made. As to the Secretary of State see PARA 2.

10 Is anything required by the Gambling Act 2005 s 69: see PARA 353.

11 Gambling Act 2005 s 112(6).

12 See note 8.

13 Is it ceases to have effect by virtue of the Gambling Act 2005 ss 113, 114, 115, 118 or 119: see PARAS 391-393, 396-397.

14 Gambling Act 2005 s 112(4).

15 Is it subject to the Gambling Act 2005 ss 113, 114, 115, 118, 119: see PARAS 391-393, 396-397.

16 Gambling Act 2005 s 112(7)(a).

17 Gambling Act 2005 s 112(7)(b).

18 Is it a statement or revised statement under the Gambling Act 2005 s 23: see PARA 336.

19 See the Gambling Act 2005 s 112(7)(c).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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391. Surrender of licences.

An operating licence¹ ceases to have effect if the licensee² notifies³ the Gambling Commission⁴ of his intention to surrender the licence, and gives the Commission either the licence, or a written statement explaining why it is not reasonably practicable to produce the licence⁵.

1 As to the meaning of 'operating licence' see PARA 349 note 2.

2 As to the meaning of 'licensee' see PARA 349 note 5.

3 As to the method of notification see PARA 356 note 5.

4 As to the Gambling Commission see PARA 4.

5 Gambling Act 2005 s 113.

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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392. Lapse of licences.

In the case of an operating licence¹ issued to an individual, the licence lapses if the licensee² dies³ or becomes, in the opinion of the Gambling Commission⁴ as notified⁵ to the licensee, incapable of carrying on the licensed activities⁶ by reason of mental or physical incapacity⁷. Such a licence also lapses if the licensee becomes bankrupt⁸ or if sequestration of the licensee's estate⁹ is awarded¹⁰.

In any other case an operating licence lapses if the licensee ceases to exist or goes into liquidation¹¹.

1 As to the meaning of 'operating licence' see PARA 349 note 2.

2 As to the meaning of 'licensee' see PARA 349 note 5.

3 Gambling Act 2005 s 114(1)(a).

4 As to the Gambling Commission see PARA 4.

5 As to the method of notification see PARA 356 note 5.

6 As to the meaning of 'the licensed activities' see PARA 354 note 3.

7 Gambling Act 2005 s 114(1)(b).

8 Ie within the meaning of the Insolvency Act 1986 s 381: see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 84.

9 Ie under the Bankruptcy (Scotland) Act 1985 s 12(1).

10 Gambling Act 2005 s 114(1)(c), (d).

11 Gambling Act 2005 s 114(2). A company goes into liquidation if it passes a resolution for voluntary winding up or an order for its winding up is made by the court at a time when it has not already gone into liquidation by passing such a resolution: see the Insolvency Act 1986 s 247(2) (applied by the Gambling Act 2005 s 113(2)); and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 9.

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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393. Forfeiture of licences.

Where the holder¹ of an operating licence² is convicted of a relevant offence³ by or before a court in Great Britain⁴, the court may order forfeiture of the licence⁵. Forfeiture under these provisions is to be on such terms, which may include terms as to suspension, as may be specified by:

- 1140 (1) the court which orders forfeiture;
- 1141 (2) a court to which an appeal against the conviction⁶, or against any order made on the conviction, has been or could be made; or
- 1142 (3) the High Court, if hearing proceedings relating to the conviction⁷;

and the terms on which a forfeiture order is made must, in particular, include a requirement that the licensee⁸ deliver to the Gambling Commission⁹, within such time as the order may specify, either the licence or a statement explaining why it is not reasonably practicable to produce the licence¹⁰.

Subject to any express provision made under heads (1) to (3) above, an operating licence ceases to have effect on the making of a forfeiture order¹¹. As soon as is reasonably practicable after making an order for forfeiture under these provisions, the court must notify¹² the Commission¹³.

- 1 As to the meaning of 'holder' see PARA 350 note 5.
- 2 As to the meaning of 'operating licence' see PARA 349 note 2.
- 3 As to the meaning of 'relevant offence' see PARA 353 note 11.
- 4 As to the meaning of 'Great Britain' see PARA 16 note 8.
- 5 Gambling Act 2005 s 115(1).
- 6 As to the meaning of 'conviction' see PARA 355 note 22.
- 7 Gambling Act 2005 s 115(2).
- 8 As to the meaning of 'licensee' see PARA 349 note 5.
- 9 As to the Gambling Commission see PARA 4.
- 10 Gambling Act 2005 s 115(4).
- 11 Gambling Act 2005 s 115(3).
- 12 As to the method of notification see PARA 356 note 5.
- 13 Gambling Act 2005 s 115(5).

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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F. REGULATION OF LICENSEES BY THE GAMBLING COMMISSION

394. Licence holder's duty to give information to the Gambling Commission.

The holder¹ of an operating licence² must comply with a request of the Gambling Commission³ to:

- 1143 (1) produce a written or electronic record relating to the licensed activities⁴;
- 1144 (2) provide a copy of a written or electronic record relating to the licensed activities;
- 1145 (3) provide information about the licensed activities⁵.

Such a request may specify the form and manner in which a record or information is to be produced or provided and the period within which a record or information is to be produced or provided⁶; and the Commission may retain anything provided under heads (1) to (3) above⁷. The Commission may, however, exercise a power under these provisions only for the purpose of:

- 1146 (a) determining whether activities have been carried on in purported reliance on the licence but not in accordance with a condition of the licence; or
- 1147 (b) determining the suitability of the licensee⁸ to carry on the licensed activities⁹.

A person commits an offence if he fails without reasonable excuse to comply with such a request¹⁰.

1 As to the meaning of 'holder' see PARA 350 note 5.

2 As to the meaning of 'operating licence' see PARA 349 note 2.

3 As to the Gambling Commission see PARA 4.

4 As to the meaning of 'the licensed activities' see PARA 354 note 3.

5 Gambling Act 2005 s 122(1).

6 Gambling Act 2005 s 122(2).

7 Gambling Act 2005 s 122(3).

8 As to the meaning of 'licensee' see PARA 349 note 5.

9 Gambling Act 2005 s 122(4).

10 Gambling Act 2005 s 122(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 122(6). As to the standard scale see PARA 17 note 21.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(i) Operating Licences/F. REGULATION OF LICENSEES BY THE GAMBLING COMMISSION/395. Gambling Commission's powers of review.

395. Gambling Commission's powers of review.

The Gambling Commission¹ may in relation to operating licences² of a particular description review the manner in which licensees³ carry on licensed activities⁴, and, in particular, arrangements made by licensees to ensure compliance with conditions attached⁵ by the Commission or by the Secretary of State⁶.

The Commission may also review any matter connected with the provision of facilities for gambling⁷ as authorised⁸ by an operating licence if the Commission:

- 1148 (1) has reason to suspect that activities may have been carried on in purported reliance on the licence but not in accordance with a condition of the licence;
- 1149 (2) believes that the licensee, or a person who exercises a function in connection with or is interested in the licensed activities, has acquired a conviction⁹ for a relevant offence¹⁰; or
- 1150 (3) for any reason¹¹ either suspects that the licensee may be unsuitable to carry on the licensed activities or thinks that a review would be appropriate¹².

Before commencing such a review of an operating licence the Commission must notify¹³ the licensee and inform him of the procedure to be followed in the conduct of the review¹⁴. In conducting such a review of an operating licence the Commission must give the licensee an opportunity to make representations and may give other persons an opportunity to make representations¹⁵.

Following a review under the above provisions the Commission may:

- 1151 (a) give the holder of an operating licence a warning;
- 1152 (b) attach an additional condition to a licence¹⁶;
- 1153 (c) remove or amend a condition attached to a licence¹⁷;
- 1154 (d) exercise the power¹⁸ to suspend a licence;
- 1155 (e) exercise the power¹⁹ to revoke a licence;
- 1156 (f) exercise the power²⁰ to impose a penalty²¹.

In determining what action to take following a review the Commission may have regard to a warning under head (a) above given to the licensee following an earlier review, whether or not of that licence²². Where the Commission determines to take action under heads (a) to (f) above in respect of a licence it must as soon as is reasonably practicable notify the licensee of the action and of the Commission's reasons²³.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'operating licence' see PARA 349 note 2.

3 As to the meaning of 'licensee' see PARA 349 note 5.

4 As to the meaning of 'licensed activities' see PARA 354 note 3.

- 5 le under the Gambling Act 2005 ss 75, 77 or 78: see PARAS 357-358.
- 6 See the Gambling Act 2005 s 116(1). As to the Secretary of State see PARA 2.
- 7 As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.
- 8 As to the meaning of 'authorise' see PARA 349 note 5.
- 9 As to the meaning of 'conviction' see PARA 355 note 22.
- 10 le a conviction of a kind mentioned in the Gambling Act 2005 s 71(1): see PARA 355. As to the meaning of 'relevant offence' see PARA 353 note 11.
- 11 For these purposes, a reason may, in particular, relate to the receipt of a complaint about the licensee's activities and need not relate to any suspicion or belief about the licensee's activities: Gambling Act 2005 s 116(3).
- 12 Gambling Act 2005 s 116(2).
The Gambling Commission must carry out a review of an operating licence under s 116(2)(c) (see head (3) in the text) if it is notified in writing by the Horserace Betting Levy Board that (1) the holder of the operating licence is in default of the bookmakers' levy and has been so for at least three months; and (2) on a previous occasion (not being before the period of five years ending with the date on which the Gambling Commission receives the notice from the Horserace Betting Levy Board) he was so in default and had been so for at least three months: Gambling Act 2005 (Horserace Betting Levy) Order 2007, SI 2007/2159, art 3(2). For these purposes, a person is in default in respect of the bookmakers' levy if (a) there has become due from him under the Betting, Gaming and Lotteries Act 1963 s 28(7) (see PARA 16) an amount assessed as payable by him by way of levy; and (b) the whole or any part of that amount remains unpaid: Gambling Act 2005 (Horserace Betting Levy) Order 2007, SI 2007/2159, art 3(5). 'Bookmakers' levy' means the levy payable under the Betting, Gaming and Lotteries Act 1963 s 27 (see PARA 15): Gambling Act 2005 (Horserace Betting Levy) Order 2007, SI 2007/2159, art 2(2). Article 3 has effect until immediately before the dissolution date: art 3(1). 'The dissolution date' means the date specified in an order made under the Horserace Betting and Olympic Lottery Act 2004 s 15(1) (not yet in force) as the date on which the Horserace Betting Levy Board ceases to exist: Gambling Act 2005 (Horserace Betting Levy) Order 2007, SI 2007/2159, art 2(2). As to the Horserace Betting Levy Board see PARA 12.
- 13 As to the method of notification see PARA 356 note 5.
- 14 Gambling Act 2005 s 116(4).
- 15 Gambling Act 2005 s 116(5).
- 16 le under the Gambling Act 2005 s 77: see PARA 357.
- 17 See note 16.
- 18 le under the Gambling Act 2005 s 118: see PARA 396.
- 19 le under the Gambling Act 2005 s 119: see PARA 397.
- 20 le under the Gambling Act 2005 s 121: see PARA 398.
- 21 Gambling Act 2005 s 117(1).
- 22 Gambling Act 2005 s 117(3).
- 23 Gambling Act 2005 s 117(2).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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396. Suspension of licence.

The Gambling Commission¹ may suspend an operating licence² if, following a review³, the Commission thinks that any of the conditions specified in heads (1) to (4) below applies⁴. The Commission may also suspend an operating licence if at the time of deciding to conduct a review⁵, or at any time during the course of a review, the Commission suspects that any of those conditions may apply⁶. The conditions referred to are:

- 1157 (1) that a licensed activity⁷ is being or has been carried on in a manner which is inconsistent with the licensing objectives⁸;
- 1158 (2) that a condition of the licence has been breached;
- 1159 (3) that the licensee⁹ has failed to co-operate with a review¹⁰; or
- 1160 (4) that the licensee is unsuitable to carry on the licensed activities¹¹.

The Commission may suspend an operating licence if it thinks that any of the following conditions applies¹². Those conditions are:

- 1161 (a) that the licensee has failed to comply with a requirement of regulations requiring notification of a change of circumstance¹³; or
- 1162 (b) that the licensee has failed to submit the licence to the Commission for amendment when required¹⁴ to do so¹⁵.

Where the Commission suspends an operating licence it must specify the time when the suspension takes effect¹⁶; and it must specify either:

- 1163 (i) a period for which the suspension is to last¹⁷; or
- 1164 (ii) that the suspension is to last until some specified event occurs, which may be the giving of a notice¹⁸ by the Commission¹⁹.

The Commission may make saving or transitional provision which may, in particular, provide for a licence to continue to have effect in relation to a gaming machine²⁰ supplied, or another thing done, before the time when the suspension takes effect for other purposes²¹.

An operating licence has no effect in respect of anything done while it is suspended under these provisions²².

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'operating licence' see PARA 349 note 2.

3 Ie a review under the Gambling Act 2005 s 116(1) or (2): see PARA 395.

4 Gambling Act 2005 s 118(1).

5 See note 3.

6 Gambling Act 2005 s 118(2).

7 As to the meaning of 'licensed activity' see PARA 354 note 3.

8 As to the licensing objectives see PARA 331.

9 As to the meaning of 'licensee' see PARA 349 note 5.

10 See note 3.

11 Gambling Act 2005 s 120(1). In considering a licensee's suitability for the purpose of s 120(1)(d) (see head (4) in the text) the Commission may, in particular, have regard to: (1) the integrity of the licensee or of any person who exercises a function in connection with or is interested in the licensed activities; (2) the competence of the licensee, or of any person who exercises a function in connection with the licensed activities, to carry on the licensed activities in a manner consistent with pursuit of the licensing objectives; (3) the financial and other circumstances of the licensee or of any person who exercises a function in connection with or is interested in the licensed activities (and, in particular, the resources available for the purpose of carrying on the licensed activities): s 120(3).

12 Gambling Act 2005 s 118(3).

13 Ie regulations under the Gambling Act 2005 s 101: see PARA 384.

14 Ie under the Gambling Act 2005 s 105: see PARA 387.

15 Gambling Act 2005 s 120(2).

16 Gambling Act 2005 s 118(4)(a).

17 That period is without prejudice to the re-exercise of the power under the Gambling Act 2005 s 118(1) on or after the expiry of that period: s 118(4)(b)(i).

18 As to the method of giving notice see PARA 356 note 5.

19 Gambling Act 2005 s 118(4)(b).

20 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547.

21 Gambling Act 2005 s 118(4)(c).

22 Gambling Act 2005 s 118(5).

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(i) Operating Licences/F. REGULATION OF LICENSEES BY THE GAMBLING COMMISSION/397. Revocation of licence.

397. Revocation of licence.

The Gambling Commission¹ must revoke an operating licence² if the licensee³ fails to pay the annual fee⁴; but the Commission may disapply this provision if it thinks that a failure to pay is attributable to administrative error⁵.

The Commission may revoke an operating licence if following a review⁶ it thinks that any of the following conditions applies⁷. Those conditions are:

- 1165 (1) that a licensed activity⁸ is being or has been carried on in a manner which is inconsistent with the licensing objectives⁹;
- 1166 (2) that a condition of the licence has been breached;
- 1167 (3) that the licensee has failed to co-operate with a review¹⁰; or
- 1168 (4) that the licensee is unsuitable to carry on the licensed activities¹¹.

The Commission may also revoke an operating licence if it thinks that any of the following conditions applies¹². Those conditions are:

- 1169 (a) that the licensee has failed to comply with a requirement of regulations requiring notification of a change of circumstance¹³; or
- 1170 (b) that the licensee has failed to submit the licence to the Commission for amendment when required¹⁴ to do so¹⁵.

Where the Commission revokes an operating licence it must specify the time when the revocation takes effect¹⁶. The Commission may make saving or transitional provision which may, in particular, provide for a licence to continue to have effect in relation to a gaming machine¹⁷ supplied, or another thing done, before the time when the revocation takes effect for other purposes¹⁸.

- 1 As to the Gambling Commission see PARA 4.
- 2 As to the meaning of 'operating licence' see PARA 349 note 2.
- 3 As to the meaning of 'licensee' see PARA 349 note 5.
- 4 Ie in accordance with the Gambling Act 2005 s 100: see PARA 379.
- 5 Gambling Act 2005 s 119(3).
- 6 Ie a review under the Gambling Act 2005 s 116(1) or (2): see PARA 395.
- 7 Gambling Act 2005 s 119(1).
- 8 As to the meaning of 'licensed activity' see PARA 354 note 3.
- 9 As to the licensing objectives see PARA 331.
- 10 See note 6.

11 Gambling Act 2005 s 120(1). As to the matters to which the Commission may have regard in considering a licensee's suitability for the purpose of s 120(1)(d) (see head (4) in the text), see s 120(3), cited in PARA 396 note 11.

Sections 119, 120 have effect until immediately before the dissolution date subject to the following modifications: Gambling Act 2005 (Horserace Betting Levy) Order 2007, SI 2007/2159, art 3(1). As to the meaning of 'the dissolution date' see PARA 395 note 12. The Gambling Commission must exercise its powers under the Gambling Act 2005 s 119 to revoke the operating licence (on the grounds that the condition in s 120(1)(d) (see head (4) in the text) applies) if (1) the Commission is satisfied that the matters referred to in the Gambling Act 2005 (Horserace Betting Levy) Order 2007, SI 2007/2159, art 3(2)(a), (b) (see PARA 395 note 12) are in fact the case; and (2) having notified the Horserace Betting Levy Board and the operating licence holder in writing of this decision, the Commission has received written confirmation from the Horserace Betting Levy Board that it wants the operating licence to be revoked: art 3(3). The Commission must provide the holder of the operating licence with an opportunity to make representations on the matters referred to in art 3(2)(a), (b) before reaching a decision under art 3(3)(a) (see head (1) above): art 3(4). As to the Horserace Betting Levy Board and its prospective dissolution see PARA 12.

12 Gambling Act 2005 s 119(2).

13 The regulations under the Gambling Act 2005 s 101: see PARA 384.

14 The under the Gambling Act 2005 s 105: see PARA 387.

15 Gambling Act 2005 s 120(2).

16 Gambling Act 2005 s 119(4)(a).

17 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547.

18 Gambling Act 2005 s 119(4)(b).

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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398. Financial penalty where licence condition is breached.

The Gambling Commission¹ may require the holder² of an operating licence³ to pay a penalty if the Commission thinks that a condition of the licence has been breached⁴. Before imposing a requirement on a licensee⁵ to pay a penalty under these provisions the Commission must notify⁶ him:

- 1171 (1) that the Commission proposes to require him to pay a penalty;
- 1172 (2) of the amount of the proposed penalty;
- 1173 (3) of the Commission's reasons; and
- 1174 (4) of a period within which he may make representations to the Commission⁷.

The Commission may not give such a notice in respect of the breach of a condition after the end of the period of two years beginning with either the day on which the breach occurred or began to occur, or, if later, the day on which the breach came to the knowledge of the Commission⁸.

After the end of the period specified under head (4) above the Commission may give the licensee a notice requiring him to pay a penalty under these provisions⁹. A penalty imposed by such a notice:

- 1175 (a) is payable by the licensee to the Commission;
- 1176 (b) may be enforced as if it were a debt owed by the licensee to the Commission; and
- 1177 (c) on receipt by the Commission must be paid into the Consolidated Fund¹⁰ after deduction of a sum which represents the direct costs to the Commission of, and a reasonable share of expenditure by the Commission which is indirectly referable to, either the investigation by the Commission¹¹ of the matter in respect of which the penalty is imposed or the imposition and enforcement of the penalty¹².

The Commission must prepare a statement setting out the principles to be applied by the Commission in exercising the powers under these provisions¹³. It must review the statement from time to time¹⁴ and revise the statement when the Commission thinks it necessary¹⁵. The statement so maintained must, in particular, require the Commission in considering the imposition of a penalty under these provisions or the amount of a penalty to have regard, in particular, to:

- 1178 (i) the seriousness of the breach of condition in respect of which the penalty is proposed;
- 1179 (ii) whether or not the licensee knew or ought to have known of the breach; and
- 1180 (iii) the nature of the licensee, including, in particular, his financial resources¹⁶.

Before preparing or revising such a statement the Commission must consult the Secretary of State¹⁷, the Lord Chancellor, and such other persons as the Commission thinks appropriate¹⁸. As

soon as is reasonably practicable the Commission must send the statement and any revision to the Secretary of State, and must publish the statement and any revision¹⁹. The Commission must have regard to the statement when exercising a power under the above provisions²⁰.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'holder' see PARA 350 note 5.

3 As to the meaning of 'operating licence' see PARA 349 note 2.

4 Gambling Act 2005 s 121(1).

5 As to the meaning of 'licensee' see PARA 349 note 5.

6 As to the method of notification see PARA 356 note 5.

7 Gambling Act 2005 s 121(2).

8 Gambling Act 2005 s 121(3).

9 Gambling Act 2005 s 121(4).

10 As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

11 Ie whether by review under the Gambling Act 2005 s 116 (see PARA 395) or otherwise.

12 Gambling Act 2005 s 121(5).

13 Gambling Act 2005 s 121(6)(a). See *Statement of Principles for Determining Financial Penalties* (June 2007, Gambling Commission), set out in Paterson's Licensing Acts (116th Edn, 2008) at para 3.2076. That statement is also published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk.

14 Gambling Act 2005 s 121(6)(b).

15 Gambling Act 2005 s 121(6)(c).

16 Gambling Act 2005 s 121(7).

17 As to the Secretary of State see PARA 2.

18 Gambling Act 2005 s 121(8).

19 Gambling Act 2005 s 121(6)(d).

20 Gambling Act 2005 s 121(6)(e).

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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G. ANNUAL LEVY

399. Annual levy.

The Secretary of State¹ may make regulations requiring holders² of operating licences³ to pay an annual levy to the Gambling Commission⁴. He must consult the Commission before making such regulations⁵.

The regulations must, in particular, make provision for the amount of the levy and timing of payment of the levy⁶; and they may, in particular, make provision:

- 1181 (1) determining the amount of the levy by reference to a percentage of specified receipts of an operating licence holder;
- 1182 (2) determining the amount of the levy by reference to a percentage of specified profits of an operating licence holder;
- 1183 (3) determining the amount of the levy by reference to a percentage of the annual fee⁷;
- 1184 (4) providing for the determination of the amount of the levy according to a specified formula; or
- 1185 (5) providing for the determination of the amount of the levy in some other way⁸.

Any sum due by way of levy by virtue of these provisions is to be treated for the purposes of the Gambling Act 2005 as if it were due⁹ by way of annual fee¹⁰.

The Commission must, with the consent of the Treasury and of the Secretary of State, expend money received by way of levy for purposes related to, or by providing financial assistance¹¹ for, projects related to addiction to gambling¹², other forms of harm or exploitation associated with gambling, or any of the licensing objectives¹³.

1 As to the Secretary of State see PARA 2.

2 As to the meaning of 'holder' see PARA 350 note 5.

3 As to the meaning of 'operating licence' see PARA 349 note 2.

4 Gambling Act 2005 s 123(1). As to the Gambling Commission see PARA 4. At the date at which this volume states the law, no such regulations had been made.

5 Gambling Act 2005 s 123(7).

6 Gambling Act 2005 s 123(2).

7 Ie under the Gambling Act 2005 s 100: see PARA 379.

8 Gambling Act 2005 s 123(3).

9 See note 7.

10 Gambling Act 2005 s 123(4).

11 The reference in the text to financial assistance is a reference to grants, loans and any other form of financial assistance, which may be made or given on terms or conditions (which may include terms and conditions as to repayment with or without interest): Gambling Act 2005 s 123(6).

12 As to the meaning of 'gambling' see PARA 308.

13 Gambling Act 2005 s 123(5). As to the licensing objectives see PARA 331.

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(ii) Personal Licences

A. NATURE AND FORM OF LICENCES

400. Nature and duration of personal licence; multiple licences.

For the purposes of the Gambling Act 2005, a 'personal licence' is a licence which authorises an individual to perform the functions of a specified management office¹, or to perform a specified operational function², in connection with (1) the provision of facilities for gambling³; or (2) a person who provides facilities for gambling⁴.

The Gambling Commission⁵ may issue personal licences in accordance with the relevant⁶ statutory provisions⁷. The issue of a personal licence does not affect the requirement⁸ for a premises licence⁹. The Gambling Commission may not issue a personal licence to an individual who already holds one¹⁰; but a personal licence may authorise the performance of more than one function¹¹.

A personal licence continues to have effect unless and until it ceases to do so in accordance with the statutory provisions with regard to surrender¹², lapse¹³, forfeiture¹⁴ or revocation¹⁵.

1 For these purposes, 'management office' has the same meaning as in the Gambling Act 2005 s 80 (see PARA 360 note 8): s 127(2).

2 For these purposes, 'operational function' has the same meaning as in the Gambling Act 2005 s 80 (see PARA 360 note 8): s 127(2).

3 As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

4 Gambling Act 2005 s 127(1).

5 As to the Gambling Commission see PARA 4.

6 In accordance with the Gambling Act 2005 Pt 5 (ss 65-126, Sch 7) (see PARA 349 et seq) as applied by s 128(1) (see PARA 402).

7 Gambling Act 2005 s 65(1) (applied by s 128(1)).

8 It does not affect the operation of the Gambling Act 2005 s 37 (see PARA 616): s 65(3).

9 See the Gambling Act 2005 s 65(3) (applied by s 128(1)).

10 Gambling Act 2005 s 133(1).

11 Gambling Act 2005 s 133(2).

12 In the Gambling Act 2005 s 113 (as applied for these purposes): see PARA 425.

13 In the Gambling Act 2005 s 114 (as applied for these purposes): see PARA 426.

14 In the Gambling Act 2005 s 115 (as applied for these purposes): see PARA 427.

15 Gambling Act 2005 s 131. As to revocation see s 119 (as applied for these purposes); and PARA 431.

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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401. Exemption for small-scale operators.

A condition may not be attached to an operating licence¹ requiring possession of a personal licence² if the licensee³ is a small-scale operator⁴. 'Small-scale operator' has such meaning as the Secretary of State⁵ may prescribe by regulations⁶; and such regulations may, in particular, make provision by reference to:

- 1186 (1) the size or value of business carried on, or expected to be carried on, in reliance on an operating licence;
- 1187 (2) the number of persons employed, or expected to be employed, by the licensee⁷.

For these purposes⁸, the holder of an operating licence ('the licensee') is a small-scale operator if, in relation to the activity authorised by that operating licence ('the licensed activity'):

- 1188 (a) there are no more than three qualifying positions⁹ in or in respect of the licensee or in connection with the licensed activity; and
- 1189 (b) each qualifying position is occupied by a qualified person¹⁰.

A person does not cease to be a small-scale operator for these purposes if he no longer complies with the above conditions unless he fails to comply with them either for a period of more than 28 days or for two periods, each of more than 14 days, where one period occurs within 28 days of the other¹¹.

A constable¹² or enforcement officer¹³ may require¹⁴ a small-scale operator to produce his operating licence either within a specified period, or, while the operator is carrying on a licensed activity, immediately¹⁵.

1 Ie under the Gambling Act 2005 ss 75, 77 or 78: see PARAS 357-358. As to the meaning of 'operating licence' see PARA 349 note 2.

2 As to the meaning of 'personal licence' see PARA 400.

3 As to the meaning of 'licensee' see PARA 349 note 5.

4 Gambling Act 2005 s 129(1).

5 As to the Secretary of State see PARA 2.

6 Gambling Act 2005 s 129(2).

7 Gambling Act 2005 s 129(3).

8 Ie and subject to the Gambling Act 2005 (Definition of Small-scale Operator) Regulations 2006, SI 2006/3266, reg 3: see the text and note 11.

9 For these purposes, 'qualifying position' means a position which is held by a person who, by the terms of his appointment, has primary responsibility for (1) the management of the licensed activity; (2) the management of the financial affairs of the licensee; (3) ensuring the licensee complies with the requirements of the Gambling Act 2005; (4) the marketing of the licensed activity; (5) the management of the information

technology facilities used in the provision of the licensed activity; (6) the management of the licensed activity for a particular locality or area in Great Britain in which there are situated five or more sets of premises in respect of each of which the licensee holds a premises licence; or (6) the management of a single set of premises in respect of which a casino or bingo premises licence has effect: Gambling Act 2005 (Definition of Small-scale Operator) Regulations 2006, SI 2006/3266, reg 2(2). As to premises licences see PARA 460 et seq; and as to the meaning of 'Great Britain' see PARA 16 note 8.

10 Gambling Act 2005 (Definition of Small-scale Operator) Regulations 2006, SI 2006/3266, reg 2(1). For these purposes, 'qualified person' means a person who is (1) named on the operating licence as a person who holds a qualifying position; or (2) the subject of an application to vary the operating licence under the Gambling Act 2005 s 104(1)(b) (application to vary licence: see PARA 386) to add his name as a person holding a qualifying position, and (a) the application complies with s 69(2)(g) (fee: see PARA 353) and s 104(5) (accompanying statement: see PARA 386); and (b) the application has not been withdrawn or finally determined: Gambling Act 2005 (Definition of Small-scale Operator) Regulations 2006, SI 2006/3266, reg 2(3). For the purposes of reg 3(3) an application to vary an operating licence, which has been rejected by the Gambling Commission, is to be treated as having been finally determined (i) where there is no appeal to the Gambling Appeals Tribunal, on the expiry of the period for appealing; (ii) where such an appeal is made, and the appeal is either withdrawn or allowed, (subject to head (v) below) when the appeal is withdrawn, or, as the case may be, determined; (iii) where the appeal to the Gambling Appeals Tribunal is refused and no appeal is made under the Gambling Act 2005 s 143 (see PARA 457), on the expiry of the period for appealing against the decision of the Gambling Appeals Tribunal; (iv) where an appeal is made under s 143, (subject to head (v) below) on the date on which the appeal is determined or withdrawn; (v) where the result of an appeal is that the matter is remitted to the body against whose decision the appeal is made, when any subsequent proceedings relating to the decision to reject the application are finally determined (as determined in accordance with heads (i)-(iv) above): Gambling Act 2005 (Definition of Small-scale Operator) Regulations 2006, SI 2006/3266, reg 2(4).

11 Gambling Act 2005 (Definition of Small-scale Operator) Regulations 2006, SI 2006/3266, reg 3.

12 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

13 As to the meaning of 'enforcement officer' see PARA 342 note 7.

14 Ie under the Gambling Act 2005 s 108(1): see PARA 382.

15 Gambling Act 2005 s 129(4).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(ii) Personal Licences/A. NATURE AND FORM OF LICENCES/402. Application of provisions of Part 5 of the Gambling Act 2005.

402. Application of provisions of Part 5 of the Gambling Act 2005.

With certain exceptions¹, the provisions of Part 5 of the Gambling Act 2005² apply to a personal licence³ as they apply to an operating licence⁴, with:

- 1190 (1) the modifications and exclusions specified in Part 6 of that Act⁵;
- 1191 (2) such modifications and exclusions as the Secretary of State⁶ may specify by regulations⁷; and
- 1192 (3) any other necessary modifications⁸.

Regulations under a provision of Part 5 of the Gambling Act 2005:

- 1193 (a) may make different provision for purposes of Part 6 of that Act and for purposes of Part 5 of that Act; and
- 1194 (b) in making provision for purposes of Part 6 of the Gambling Act 2005, may make different provision in relation to personal licences authorising the performance of different kinds of function or the performance of functions in different circumstances⁹.

1 Ie except for the Gambling Act 2005 s 65(2), (4), (5) (see PARA 349): s 128(1).

2 Ie the Gambling Act 2005 Pt 5 (ss 65-126, Sch 7): see PARA 349 et seq.

3 As to the meaning of 'personal licence' see PARA 400.

4 As to the meaning of 'operating licence' see PARA 349 note 2.

5 Ie the Gambling Act 2005 Pt 6 (ss 127-139): see PARAS 400-401, 416, 420-421, 427, 433.

6 As to the Secretary of State see PARA 2.

7 In the exercise of this power the Secretary of State has made the Gambling (Personal Licences) (Modification of Part 5 of the Gambling Act 2005) Regulations 2006, SI 2006/3267, which came into force on 1 January 2007: reg 1. Those regulations provide that the following provisions of the Gambling Act 2005 do not apply to personal licences, ie s 72 (consideration of application; demand: see PARA 355); s 80 (requirement for personal licence: see PARA 360); s 81 (credit and inducements: see PARA 361); ss 85-87 (equipment, gaming machines and membership: see PARAS 365-366); ss 89-99 (rules for particular kinds of licence: see PARA 368 et seq); ss 102, 103 (change of corporate control and supplemental: see PARA 385); ss 110-112 (duration: see PARAS 388-390); and s 123 (levy: see PARA 399): Gambling (Personal Licences) (Modification of Part 5 of the Gambling Act 2005) Regulations 2006, SI 2006/3267, reg 2(1), Schedule, Table 1. Regulation 2(2), Schedule, Table 2 makes other modifications of the Gambling Act 2005 Pt 5; these are set out in the following paragraphs of this title in the contexts in which they arise.

8 Gambling Act 2005 s 128(1).

9 Gambling Act 2005 s 128(2).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(ii) Personal Licences/A. NATURE AND FORM OF LICENCES/403. Remote personal licences.

403. Remote personal licences.

A personal licence¹ is a 'remote personal licence' if it authorises an individual to perform functions which include the functions of a specified management office² in connection with the provision of facilities³ for remote gambling⁴.

A personal licence must state whether it is a remote personal licence or not⁵.

1 As to the meaning of 'personal licence' see PARA 400.

2 As to the meaning of 'management office' see PARA 400 note 1.

3 As to the meaning of 'providing facilities' for gambling see PARA 309.

4 Gambling Act 2005 s 67(1) (substituted for these purposes by SI 2006/3267). See also the Gambling Act 2005 s 128(1), cited in PARA 402. As to the meaning of 'remote gambling' see PARA 308.

5 Gambling Act 2005 s 67(3) (as substituted: see note 4).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(ii) Personal Licences/A. NATURE AND FORM OF LICENCES/404. Form of licence.

404. Form of licence.

A personal licence¹ must specify the person to whom it is issued and any condition attached² by the Gambling Commission³.

The Secretary of State⁴ may by regulations require the Commission to ensure that a personal licence is issued in such form as the regulations may specify, and contains, in addition to the matters specified above, such information⁵ as the regulations may specify⁶.

1 As to the meaning of 'personal licence' see PARA 400.

2 Ie any condition attached under the Gambling Act 2005 s 75 or s 77: see PARA 357.

3 Gambling Act 2005 s 66(1) (applied for these purposes by s 128(1); and amended by SI 2006/3267). As to the Gambling Commission see PARA 4.

4 As to the Secretary of State see PARA 2.

5 The information referred to in the text may, in particular, include information about conditions attached to the licence by virtue of the Gambling Act 2005 s 78 (see PARA 358): s 66(2)(b).

6 Gambling Act 2005 s 66(2) (as applied: see note 3) At the date at which this volume states the law, no such regulations had been made.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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B. APPLICATION FOR AND ISSUE OF LICENCES

405. Application for a personal licence.

A person may apply to the Gambling Commission¹ for a personal licence² to be issued to him³. An application may not be made by a child⁴ or young person⁵.

An application must:

- 1195 (1) specify any management office⁶ the performance of whose functions are to be authorised by the licence, and any operational function to be authorised by the licence⁷;
- 1196 (2) specify an address in the United Kingdom⁸ at which a document issued under the Gambling Act 2005 may be served on the applicant⁹;
- 1197 (3) be made in such form and manner as the Commission may direct¹⁰;
- 1198 (4) state whether the applicant has been convicted of a relevant offence¹¹;
- 1199 (5) state whether the applicant has been convicted of any other offence¹²;
- 1200 (6) contain or be accompanied by such other information or documents as the Commission may direct¹³; and
- 1201 (7) be accompanied by the prescribed¹⁴ fee¹⁵.

The Secretary of State may by regulations:

- 1202 (a) require an applicant for a personal licence to notify specified persons within a specified period, which may be wholly or partly before the application is made; and
- 1203 (b) provide for the consequences of failure to comply with a requirement under head (a) above, which may, in particular, include provision for an application to be disregarded or for a licence to lapse¹⁶.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'personal licence' see PARA 400.

3 Gambling Act 2005 s 69(1) (s 69 applied for these purposes by s 128(1)).

4 As to the meaning of 'child' see PARA 331 note 2.

5 Gambling Act 2005 s 69(3) (as applied (see note 3); amended by SI 2006/3267). As to the meaning of 'young person' see PARA 353 note 5.

6 As to the meaning of 'management office' see PARA 400 note 1.

7 Gambling Act 2005 s 69(2)(a) (substituted for these purposes by SI 2006/3267). As to the meaning of 'operational function' see PARA 400 note 2.

8 As to the meaning of 'United Kingdom' see PARA 16 note 8.

9 Gambling Act 2005 s 69(2)(b) (as applied: see note 3).

10 Gambling Act 2005 s 69(2)(c) (as applied: see note 3). Where the Commission has power under Pt 5 (ss 65-126, Sch 7) (as so applied) to give a direction or impose a requirement it may give different directions or impose different requirements in relation to different cases or circumstances: s 124 (as so applied). A direction under s 69(2)(c) (as so applied) or under s 69(2)(f) (as so applied) (see head (6) in the text) may, in particular, require that an application (1) be signed by the applicant's employer; (2) contain or be accompanied by information provided by the applicant's employer or relating to his employment: s 130(1). For these purposes, a reference to an applicant's employer is a reference to any person for whom the applicant, in the course of a business (but whether or not under a contract of employment) (a) provides services; (b) has provided services; or (c) intends to provide services (s 130(3)); but neither s 130 nor any other provision of the Gambling Act 2005 is to be treated as preventing a person who is not employed from applying for a personal licence (s 130(4)).

11 Gambling Act 2005 s 69(2)(d) (as applied: see note 3). As to the meaning of 'relevant offence' see PARA 353 note 11. The Rehabilitation of Offenders Act 1974 s 4 (effect of rehabilitation: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 660 et seq) does not apply for the purposes of or in connection with the Gambling Act 2005 s 69(2)(d): s 125(a) (as so applied).

12 Gambling Act 2005 s 69(2)(e) (as applied: see note 3).

13 Gambling Act 2005 s 69(2)(f) (as applied: see note 3). See also note 10.

14 As to the meaning of 'prescribed' see PARA 353 note 14.

15 Gambling Act 2005 s 69(2)(g) (as applied: see note 3). For the relevant regulations see the Gambling (Personal Licence Fees) Regulations 2006, SI 2006/3285, which came into force on 1 January 2007: reg 1. The fee to accompany an application for a personal licence under s 69 (as so applied) is £330, if the application is for a personal management licence, or £165, if the application is for a personal functional licence: reg 3(1). But if an application for a personal licence is made by means of the Commission's website, the fee to accompany that application is 90% of the fee that would otherwise be payable under reg 3(1): reg 3(2). For the purposes of reg 3(2), an application is not to be regarded as being made by means of the Commission's website unless it contains the information or documents required by the Gambling Act 2005 s 69(2)(a), (b), (d), (e) and (f) (as so applied) (see heads (1)-(4), (6) in the text), to the extent that such information or documents can be transmitted electronically: Gambling (Personal Licence Fees) Regulations 2006, SI 2006/3285, reg 3(3). 'Personal management licence' means a personal licence which authorises an individual to perform the functions of a management office within the meaning of the Gambling Act 2005 s 80(5) (see PARA 360 note 8) (whether or not the licence also authorises the individual to perform a specified operational function within the meaning of s 80(6) (see PARA 360 note 8)); and 'personal functional licence' means a personal licence which does not authorise an individual to perform any function other than an operational function within the meaning of s 80(6): Gambling (Personal Licence Fees) Regulations 2006, SI 2006/3285, reg 2(1).

16 Gambling Act 2005 s 69(4) (as applied: see note 3). At the date at which this volume states the law, no such regulations had been made.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

405 Application for a personal licence

NOTE 15--The fee for an application for a personal management licence is now £370 and the fee for an application for a personal functional licence is now £185: SI 2006/3285 (amended by SI 2009/1971).

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406. Procedure for considering an application.

For the purpose of considering an application for a personal licence¹ the Gambling Commission² may require the applicant to provide information³ and may consult, and have regard to information provided by or an opinion⁴ stated by, any person⁵.

In particular, the Commission may require the production of an enhanced criminal record certificate⁶ relating to the applicant⁷.

The statement of principles for licensing and regulation maintained by the Commission⁸ must, in particular, specify the Commission's practice in relation to:

- 1204 (1) the delegation of functions in relation to applications;
- 1205 (2) the holding of oral hearings of applications; and
- 1206 (3) evidence required or accepted in connection with applications⁹.

The Commission may disregard an irregularity or deficiency in or in relation to an application, other than a failure to pay the required¹⁰ fee¹¹.

1 Ie an application under the Gambling Act 2005 s 69 (as applied for these purposes): see PARA 405. As to the meaning of 'personal licence' see PARA 400.

2 As to the Gambling Commission see PARA 4.

3 For these purposes, 'information' means information about the applicant or the licensed activities: Gambling Act 2005 s 73(2) (s 73 applied for these purposes by s 128(1); s 73(2), (3) amended for these purposes by SI 2006/3267). The Commission may require an applicant to obtain information from his employer: Gambling Act 2005 s 130(2). As to the meaning of 'employer' see PARA 405 note 10. See also s 130(4), cited in PARA 405 note 10. A reference to the licensed activities is to be construed in accordance with s 70(9) (as applied for these purposes (see PARA 407)): s 73(6) (as so applied) 'Licensed activities' in relation to a personal licence means the functions whose performance is authorised by the licence: s 126(1) (definition substituted for these purposes by SI 2006/3267).

4 For these purposes, 'opinion' means an opinion about the applicant or the licensed activities: Gambling Act 2005 s 73(2) (as applied and amended: see note 3).

5 Gambling Act 2005 s 73(1) (as applied: see note 3).

6 Ie under the Police Act 1997 s 113B: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 713 et seq.

7 Gambling Act 2005 s 73(3) (as applied and amended: see note 3). Section 73(3) refers to an enhanced criminal record certificate under the Police Act 1997 s 115, but s 115 is repealed and replaced by s 113B: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 713 et seq.

8 Ie the statement maintained under the Gambling Act 2005 s 23: see PARA 336.

9 Gambling Act 2005 s 73(4) (as applied: see note 3).

10 Ie the fee required by the Gambling Act 2005 s 69(2)(g) (as applied): see PARA 405 text and note 11.

11 Gambling Act 2005 s 73(5) (as applied: see note 3).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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407. Consideration of the application.

In considering an application for a personal licence¹ the Gambling Commission²:

- 1207 (1) must have regard to the licensing objectives³; and
- 1208 (2) must form and have regard to an opinion of the applicant's suitability to carry on the licensed activities⁴.

For the purpose of head (2) above, the Commission may, in particular, have regard to:

- 1209 (a) the integrity of the applicant;
- 1210 (b) the competence of the applicant to carry on the licensed activities in a manner consistent with pursuit of the licensing objectives;
- 1211 (c) the financial and other circumstances of the applicant and, in particular, the resources likely to be available for the purpose of carrying on the licensed activities⁵.

The statement of principles for licensing and regulation maintained by the Commission⁶ must specify the principles to be applied by the Commission in considering applications for personal licences⁷. The statement must, in particular, specify the kind of evidence to which the Commission will have regard when assessing integrity, competence and financial or other circumstances; and that evidence may include:

- 1212 (i) interviews conducted by or on behalf of the Commission;
- 1213 (ii) references provided to the Commission at the request of the applicant;
- 1214 (iii) information or opinions provided to the Commission, whether or not on request, by other persons;
- 1215 (iv) information sought by the Commission as to solvency in general and financial reserves in particular;
- 1216 (v) the completion of training, whether provided in accordance with arrangements made by the Commission or otherwise;
- 1217 (vi) the possession of qualifications, whether awarded in accordance with arrangements made by the Commission or otherwise⁸.

The statement may specify a class of applicant in relation to whom the Commission will or may assume integrity for the purpose of head (a) above⁹.

Without prejudice to the generality of the above provisions, the Commission may refuse an application if the applicant has a conviction¹⁰ for a relevant offence¹¹.

1 le an application under the Gambling Act 2005 s 69 (as applied by s 128(1)): see PARA 405. As to the meaning of 'personal licence' see PARA 400.

2 As to the Gambling Commission see PARA 4.

3 As to the licensing objectives see PARA 331.

- 4 See the Gambling Act 2005 s 70(1) (ss 70, 71 applied for these purposes by s 128(1); ss 70(1), (2), (7), 71(1) amended for these purposes by SI 2006/3267). For these purposes, in relation to an application, a reference to the licensed activities is a reference to the activities which will be the licensed activities if the application is granted: Gambling Act 2005 s 70(9)(a) (as so applied). See also PARA 406 note 3.
- 5 Gambling Act 2005 s 70(2) (as applied and amended: see note 4).
- 6 Is the statement maintained under the Gambling Act 2005 s 23: see PARA 336.
- 7 Gambling Act 2005 s 70(4) (as applied: see note 4).
- 8 Gambling Act 2005 s 70(5) (as applied: see note 4).
- 9 Gambling Act 2005 s 70(7) (as applied and amended: see note 4).
- 10 As to the meaning of 'conviction' see PARA 355 note 22. The Rehabilitation of Offenders Act 1974 s 4 (effect of rehabilitation: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 660 et seq) does not apply for the purposes of or in connection with the Gambling Act 2005 s 71(1): s 125(b).
- 11 Gambling Act 2005 s 71(1), (2) (as applied and amended: see note 4).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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408. Determination of the application.

On considering an application for a personal licence¹ the Gambling Commission² must either grant it, reject it, or grant it in respect of one or more of the specified activities³ and reject it in respect of the others⁴.

Where the Commission grants an application in whole or in part it must as soon as is reasonably practicable notify⁵ the applicant of the grant, and issue a personal licence to the applicant⁶; and where the Commission rejects an application in whole or in part it must as soon as is reasonably practicable notify the applicant of the rejection, and of the reasons for it⁷. There is a right of appeal to the Gambling Appeals Tribunal against such a rejection⁸.

1 le an application under the Gambling Act 2005 s 69 (as applied for these purposes): see PARA 405. As to the meaning of 'personal licence' see PARA 400.

2 As to the Gambling Commission see PARA 4.

3 le the activities specified in accordance with the Gambling Act 2005 s 69(2)(a) (as applied for these purposes): see PARA 405.

4 Gambling Act 2005 s 74(1) (s 74 applied for these purposes by s 128(1)).

5 As to the method of notification see PARA 356 note 5.

6 Gambling Act 2005 s 74(2) (as applied: see note 4).

7 Gambling Act 2005 s 74(3) (as applied: see note 4).

8 See the Gambling Act 2005 s 141(1). As to the Gambling Appeals Tribunal see PARA 6; and as to appeals see PARA 434 et seq.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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C. CONDITIONS ATTACHED TO LICENCES

409. General and individual conditions imposed by the Gambling Commission.

The Gambling Commission¹ may specify conditions to be attached to each personal licence², or to each personal licence falling within a specified class³; and a class may be defined wholly or partly by reference to:

- 1218 (1) the nature of the licensed activities⁴;
- 1219 (2) the circumstances in which the licensed activities are carried on;
- 1220 (3) the nature or circumstances of the licensee⁵.

Where the Commission issues a personal licence it must attach to the licence any condition so specified as a condition to be attached to personal licences of a class within which the licence falls⁶.

Before so specifying a condition⁷ the Commission must consult one or more persons who in the Commission's opinion represent the interests of personal licensees who may be affected by the condition, and such of the specified persons⁸ as the Commission thinks appropriate, if any⁹.

Where the Commission proposes to specify a condition:

- 1221 (a) at least three months before making the specification the Commission must give notice¹⁰ of it to the holder¹¹ of each licence which has effect at that time, and is within a class affected by the specification¹²;
- 1222 (b) if the Commission issues, after that time but before the specification is made, a personal licence of a class affected by the specification, the Commission must give the licensee notice of the proposed specification¹³; and
- 1223 (c) on the making of the specification an existing licence is to be subject¹⁴ to the condition specified¹⁵.

If, however, the Commission thinks it necessary by reason of urgency to make a specification without giving the notice required by head (a) above, the Commission must give as much notice as it thinks possible in the circumstances to the persons mentioned in that head¹⁶. Head (b) above then has effect after the time when such notice is given¹⁷, and on the making of the specification an existing licence is to be subject¹⁸ to the condition specified¹⁹.

The Commission must publish any specification as soon as is reasonably practicable²⁰. It may amend or revoke a condition which has been specified²¹.

Where the Commission issues a personal licence it may attach a condition to the licence²².

The scope of these powers to attach conditions is discussed below²³.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'personal licence' see PARA 400.

3 Gambling Act 2005 s 75(1) (ss 75, 76, 77 applied for these purposes by s 128(1)). The Gambling Commission has published a series of documents setting out conditions applicable to classes of personal licences. These are set out in the current edition of Paterson's Licensing Acts and published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk. See in particular *Licence Conditions and Codes of Practice* (June 2007, Gambling Commission) set out in Paterson's Licensing Acts (116th Edn, 2008) at para 3.2070. Revised *Licence Conditions and Codes of Practice* (October 2008, Gambling Commission) will come into force on 1 January 2009, and are accessible on the Commission's website.

4 As to the meaning of 'the licensed activities' see PARA 406 note 3.

5 Gambling Act 2005 s 75(2) (as applied (see note 3); amended for these purposes by SI 2006/3267). 'Licensee', in relation to a personal licence, means the person to whom the licence is issued: Gambling Act 2005 s 126(1) (applied and modified by virtue of s 128(1)).

6 Gambling Act 2005 s 75(3) (as applied: see note 3). Any condition so attached must be specified in the personal licence: see s 66(1)(c) (as applied for these purposes); and PARA 404.

7 A reference in the Gambling Act 2005 s 76 (see the text and notes 8-21) to the specification of a condition includes a reference to the amendment or revocation of a condition: s 76(1) (as applied: see note 3).

8 In the persons specified in the Gambling Act 2005 s 23(5): see PARA 336.

9 Gambling Act 2005 s 76(2) (as applied: see note 3).

10 As to the method of giving notice see PARA 356 note 5.

11 'Holder', in relation to a personal licence, means the person to whom the licence is issued: Gambling Act 2005 s 126(1) (applied and modified by virtue of s 128(1)).

12 Gambling Act 2005 s 76(4)(a) (as applied: see note 3).

13 Gambling Act 2005 s 76(4)(b) (as applied: see note 3).

14 In by virtue of the Gambling Act 2005 s 76(4): see heads (a)-(c) in the text.

15 Gambling Act 2005 s 76(4)(c) (as applied: see note 3). Section 76(4)(c), in its application to the amendment or revocation of a condition (by virtue of s 76(1): see the text and note 21), is to be treated as making existing licences subject to the condition as amended, or relieving existing licences from the condition revoked: s 76(6) (as so applied).

16 Gambling Act 2005 s 76(5)(a) (as applied: see note 3).

17 Gambling Act 2005 s 76(5)(b) (as applied: see note 3).

18 See note 14.

19 See the Gambling Act 2005 s 76(5)(c) (as applied: see note 3) applying s 76(4)(c).

20 Gambling Act 2005 s 76(3) (as applied: see note 3).

21 See the Gambling Act 2005 s 76(1) (as applied: see note 3).

22 Gambling Act 2005 s 77 (as applied: see note 3). Any condition so attached must be specified in the personal licence: see s 66(1)(c) (as applied for these purposes); and PARA 404.

23 See the Gambling Act 2005 s 79 (as applied for these purposes); and PARA 411.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(ii) Personal Licences/C. CONDITIONS ATTACHED TO LICENCES/410. Secretary of State's power to impose a condition.

410. Secretary of State's power to impose a condition.

The Secretary of State¹ may by regulations provide for a specified condition to be attached to personal licences² falling within a specified description³. Transitional provision of such regulations⁴ may, in particular, apply a condition, with or without modification, to licences issued before the regulations are made or come into force⁵.

1 As to the Secretary of State see PARA 2.

2 As to the meaning of 'personal licence' see PARA 400.

3 Gambling Act 2005 s 78(1) (s 78 applied for these purposes by s 128(1)). At the date at which this volume states the law, no such regulations had been made.

4 Ie transitional provision made by virtue of the Gambling Act 2005 s 355(1)(c).

5 Gambling Act 2005 s 78(2) (as applied: see note 3).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(ii) Personal Licences/C. CONDITIONS ATTACHED TO LICENCES/411. Scope of powers to attach conditions.

411. Scope of powers to attach conditions.

Without prejudice to the generality of the powers conferred on the Gambling Commission¹ and the Secretary of State² to impose conditions on personal licences³, a condition attached under any of those statutory powers may, in particular, do any of the things specified in heads (1) to (5) below⁴:

- 1224 (1) a condition may have the effect of restricting the activities that may be carried on in reliance on the licence by reference to the nature of the activities, the circumstances in which they are carried on, or their extent⁵;
- 1225 (2) a condition may make provision wholly or partly by reference to:
 - 111. (a) the nature of the licensed activities⁶;
 - 112. (b) the circumstances in which the licensed activities are carried on;
 - 113. (c) the nature or circumstances of the licensee⁷;
- 1226 (3) a condition may relate to the financial circumstances of the licensee⁸;
- 1227 (4) a condition may make provision about the provision of assistance to persons who are or may be affected by problems related to gambling⁹;
- 1228 (5) a condition may make provision about:
 - 114. (a) establishing the identity of users of facilities;
 - 115. (b) recording the identity of users of facilities;
 - 116. (c) restricting facilities to persons registered in respect of the facilities in advance¹⁰.

1 As to the Gambling Commission see PARA 4.

2 As to the Secretary of State see PARA 2.

3 Ie the powers conferred by the Gambling Act 2005 ss 75, 77 and 78 (as applied for these purposes): see PARAS 409-410. As to the meaning of 'personal licence' see PARA 400.

4 Gambling Act 2005 s 79(1) (s 79 applied for these purposes by s 128(1)).

5 Gambling Act 2005 s 79(2) (as applied: see note 4).

6 As to the meaning of 'the licensed activities' see PARA 406 note 3.

7 Gambling Act 2005 s 79(3) (as applied (see note 4); s 79(3), (5) amended for these purposes by SI 2006/3267). As to the meaning of 'licensee' see PARA 409 note 5.

8 Gambling Act 2005 s 79(5) (as applied (see note 4) and amended (see note 7)).

9 Gambling Act 2005 s 79(8) (as applied: see note 4).

10 Gambling Act 2005 s 79(9) (as applied: see note 4).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(ii) Personal Licences/C. CONDITIONS ATTACHED TO LICENCES/412. Conditions requiring compliance with code of practice.

412. Conditions requiring compliance with code of practice.

A personal licence¹ must be subject to the condition that the licensee² ensures compliance with any relevant social responsibility provision of a code³ of practice issued⁴ by the Gambling Commission⁵. This does not, however, prevent compliance with a provision of a code, other than a social responsibility provision, from being made the subject of a condition imposed⁶ under the Commission's or the Secretary of State's⁷ statutory powers⁸.

1 As to the meaning of 'personal licence' see PARA 400.

2 The reference in the text to a licensee includes, where the licence authorises the performance of the functions of a management office, a reference to a person for whom the licensee is responsible: Gambling Act 2005 s 82(2)(a) (s 82 applied for these purposes by s 128(1); s 82(2)(a) substituted for these purposes, and s 82(4), (5) added, by SI 2006/3267). For these purposes, the licensee is responsible for a person if (1) the licensee is required by the terms of his appointment, to take or share responsibility for the conduct of that person; and (2) that person performs an operational function in connection with an activity performed in reliance on a relevant operating licence: Gambling Act 2005 s 82(4) (as so added). The reference to a relevant operating licence in s 82(4) is to any operating licence in connection with which the licensee performs the functions authorised by his personal licence: s 82(5) (as so added). As to the meaning of 'licensee' in relation to an personal licence generally see PARA 409 note 5; as to the meanings of 'management office' and 'operational function' see PARA 400 notes 1-2; and as to the meaning of 'operating licence' see PARA 349 note 2.

3 The reference in the text to a social responsibility provision of a code is a reference to a provision identified by a code as being included in pursuance of the Gambling Act 2005 s 24(2) (see PARA 337): s 82(2)(b) (as applied: see note 2).

4 Issued under the Gambling Act 2005 s 24: see PARA 337.

5 Gambling Act 2005 s 82(1) (as applied: see note 2). As to the Gambling Commission see PARA 4.

6 Is a condition under the Gambling Act 2005 ss 75, 77 or 78 (as applied for these purposes): see PARAS 409-410.

7 As to the Secretary of State see PARA 2.

8 Gambling Act 2005 s 82(3) (as applied: see note 2).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(ii) Personal Licences/C. CONDITIONS ATTACHED TO LICENCES/413. Mandatory condition requiring the return of stakes to children.

413. Mandatory condition requiring the return of stakes to children.

The following provisions apply to a personal licence¹ which authorises the licensee² to perform a specified operational function³ in connection with the provision of facilities for gambling⁴ under an operating licence⁵. The personal licence must by virtue of these provisions be subject to the condition that, if the licensee becomes aware that a child⁶ or young person⁷ is using or has used facilities for gambling provided in reliance on the operating licence, the licensee:

- 1229 (1) must return any money paid in respect of the use of those facilities, whether by way of fee, stake⁸ or otherwise, by the child or young person as soon as is reasonably practicable; and
- 1230 (2) may not give a prize⁹ to the child or young person¹⁰;

but this does not apply where the licensee does not have authority under the terms or conditions of his appointment to act in the way so required¹¹. In such a case, the licensee must take all reasonable steps to inform a person having the appropriate authority of the relevant matters relating to the child or young person referred to above¹². Subject to that qualification, the condition described above has effect despite any contract or other agreement and despite any rule of law, and does not enable a licensee to demand repayment of, and does not require a child or young person to return, a prize paid before the licensee becomes aware that the participant is a child or young person¹³.

In relation to participation in a lottery¹⁴ or football pools¹⁵, however, a reference to a child or young person in the above provisions is to be treated as a reference only to a child¹⁶.

1 As to the meaning of 'personal licence' see PARA 400.

2 As to the meaning of 'licensee' see PARA 409 note 5.

3 As to the meaning of 'operational function' see PARA 400 note 2.

4 As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

5 Gambling Act 2005 s 83(1) (s 83 applied for these purposes by s 128(1); s 83(1) substituted for these purposes, s 83(1A), (1B) added, and s 83(3) amended, by SI 2006/3267). As to the meaning of 'operating licence' see PARA 349 note 2.

6 As to the meaning of 'child' see PARA 331 note 2.

7 As to the meaning of 'young person' see PARA 353 note 5. See, however, the Gambling Act 2005 s 84(4)(b); and the text and notes 14-16.

8 As to the meaning of 'stake' see PARA 312 note 6.

9 For these purposes, 'prize' includes both a prize provided by a person organising gambling and winnings of money staked: Gambling Act 2005 s 83(5) (as applied: see note 5).

10 Gambling Act 2005 s 83(1A) (as added: see note 5). Heads (1) and (2) in the text reproduce the wording in s 83(1) (as originally enacted) as it applies to the licensee in relation to an operating licence: see PARA 363. The obligation on a licensee to return money, and the prohibition on giving a prize, to a child or young person does not apply to the use of a Category D gaming machine or participation in equal chance gaming at a

licensed family entertainment centre: see s 83(2), disapplying s 83(1). Section 83(2) is applied for these purposes by s 128(1). As to the meaning of 'Category D gaming machine' see PARA 552; as to the meaning of 'equal chance gaming' see PARA 311 note 4; and as to the meaning of 'licensed family entertainment centre' see PARA 363 note 3.

- 11 Gambling Act 2005 s 83(1B) (as added: see note 5).
- 12 See note 11.
- 13 Gambling Act 2005 s 83(3) (as applied and amended: see note 5).
- 14 As to the meaning of 'lottery' see PARA 317.
- 15 As to the meaning of 'football pools' see PARA 363 note 15.
- 16 Gambling Act 2005 s 83(4)(b) (as applied: see note 5).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(ii) Personal Licences/C. CONDITIONS ATTACHED TO LICENCES/414. Conditions as to premises.

414. Conditions as to premises.

A personal licence¹ may not include a condition²:

- 1231 (1) requiring that the licensed activities³ be carried on at a specified place or class of place;
- 1232 (2) preventing the licensed activities from being carried on at a specified place or class of place; or
- 1233 (3) specifying premises⁴ on which the licensed activities may be carried on⁵.

A personal licence of any kind may authorise activities carried on in more than one place⁶.

1 As to the meaning of 'personal licence' see PARA 400.

2 ie whether attached by virtue of the Gambling Act 2005 ss 75, 77 or 78 (as applied for these purposes): see PARAS 409-410.

3 As to the meaning of 'the licensed activities' see PARA 406 note 3.

4 As to the meaning of 'premises' see PARA 311 note 5.

5 Gambling Act 2005 s 84(1)(a) (s 84(1)(a), (2) applied for these purposes by s 128(1)).

6 Gambling Act 2005 s 84(2) (as applied: see note 5).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(ii) Personal Licences/C. CONDITIONS ATTACHED TO LICENCES/415. Condition requiring the provision of information.

415. Condition requiring the provision of information.

A condition attached¹ to a personal licence² may require the provision of information of a specified kind to the Gambling Commission³, or to another specified person or class of person⁴. Such a condition may, in particular:

- 1234 (1) relate to information about the use made of facilities provided⁵ in accordance with a relevant operating licence⁶;
- 1235 (2) require a person to provide any information that he suspects may:
79
- 117. (a) relate to the commission of an offence under the Gambling Act 2005⁷;
- 118. (b) relate to a breach of a rule applied by a sporting or other body; or
- 119. (c) lead to the making of an order⁸ voiding a bet⁹.
80

1 Ie by virtue of the Gambling Act 2005 s 75 or s 78 (as applied for these purposes): see PARAS 409-410.

2 As to the meaning of 'personal licence' see PARA 400.

3 As to the Gambling Commission see PARA 4.

4 Gambling Act 2005 s 88(1) (s 88 applied for these purposes by s 128(1)).

5 As to the meaning of 'providing facilities' for gambling see PARA 309.

6 The reference in head (1) in the text to a relevant operating licence is to any operating licence in connection with which the licensee performs the functions authorised by his personal licence: Gambling Act 2005 s 88(2A) (added for these purposes by SI 2006/3267). As to the meaning of 'operating licence' see PARA 349 note 2; and as to the meaning of 'licensee' see PARA 409 note 5.

7 As to offences under the Gambling Act 2005 see PARA 615 et seq.

8 Ie an order under the Gambling Act 2005 s 336: see PARA 328.

9 Gambling Act 2005 s 88(2) (as applied (see note 4); amended for these purposes by SI 2006/3267).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(ii) Personal Licences/C. CONDITIONS ATTACHED TO LICENCES/416. Breach of personal licence condition.

416. Breach of personal licence condition.

Where a condition attached to an operating licence¹ includes provision for a personal licence², and an individual who holds a personal licence³ acts in the course of or in connection with any of the activities authorised by the operating licence but the individual's action is not in accordance with the terms and conditions of the personal licence, that individual commits an offence⁴. The individual may be proceeded against for that offence whether or not the holder⁵ of the operating licence is proceeded against for an offence relating to the unlawful provision of facilities for gambling⁶ by reason of a breach of the condition attached⁷ to the operating licence⁸.

1 As to the meaning of 'operating licence' see PARA 349 note 2.

2 It includes provision in accordance with the Gambling Act 2005 s 80: see PARA 360. As to the meaning of 'personal licence' see PARA 400.

3 It is under the Gambling Act 2005 Pt 6 (ss 127-139): see PARAS 400 et seq, 417 et seq.

4 See the Gambling Act 2005 s 139(1), (2). An individual guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 5 on the standard scale, or to both: s 139(4). As to the standard scale see PARA 17 note 21.

5 As to the meaning of 'holder' in relation to an operating licence see PARA 350 note 5.

6 It is an offence under the Gambling Act 2005 s 33: see PARA 615. As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

7 It is the condition under the Gambling Act 2005 s 80.

8 See the Gambling Act 2005 s 139(3).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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D. MAINTENANCE OF LICENCES

(A) MAINTENANCE FEES, REGISTER OF LICENCES AND REPLACEMENT OF LICENCES

417. Maintenance fees for licences.

The Secretary of State¹ may make regulations requiring the holder² of a personal licence³ to pay to the Gambling Commission⁴ specified fees in respect of specified periods during which the licence is held⁵. Such regulations may, in particular, make different provision for different kinds of licence or different circumstances⁶.

The holder of a personal licence must pay a first maintenance fee⁷ to the Commission within 30 days of the fifth anniversary of the date on which the licence was issued⁸. Thereafter the holder of a personal licence must pay a further maintenance fee to the Commission every five years, within 30 days of the anniversary of the date on which the licence was issued⁹.

1 As to the Secretary of State see PARA 2.

2 As to the meaning of 'holder' see PARA 409 note 11.

3 As to the meaning of 'personal licence' see PARA 400.

4 As to the Gambling Commission see PARA 4.

5 Gambling Act 2005 s 132(2). Section 100 (annual fees: see PARA 379) does not have effect in relation to personal licences: s 132(1).

6 Gambling Act 2005 s 132(3).

7 'Maintenance fee' means a fee payable in accordance with the Gambling Act 2005 s 132(2) (see the text and notes 1-5) as specified in the Gambling (Personal Licence Fees) Regulations 2006, SI 2006/3285, reg 4 (see the text and notes 8-9): reg 2.

8 Gambling (Personal Licence Fees) Regulations 2006, SI 2006/3285, reg 4(1).

The maintenance fees payable pursuant to reg 4(1), (2) are £330, if the maintenance fee is in respect of a personal management licence, or £165, if the maintenance fee is in respect of a personal functional licence: reg 4(3).

As to the meanings of 'personal management licence' and 'personal functional licence' see PARA 405 note 15.

9 Gambling (Personal Licence Fees) Regulations 2006, SI 2006/3285, reg 4(2); and see note 8.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

417 Maintenance fees for licences

NOTE 8--The fee in respect of a personal management licence is now £370 and the fee in respect of a personal functional licence is now £185: SI 2006/3285 reg 4(3) (amended by SI 2009/1971).

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418. Register of personal licences.

The Gambling Commission¹ must:

- 1236 (1) maintain a register of personal licences² containing such details of and relating to each licence as the Commission thinks appropriate;
- 1237 (2) make the register available for inspection by members of the public at all reasonable times; and
- 1238 (3) make arrangements for the provision of a copy of an entry in the register to a member of the public on request³.

The Commission may, however, refuse to provide access to the register or to provide a copy of an entry unless the person seeking access or a copy pays a fee specified by the Commission⁴. The Commission may not specify such a fee which exceeds the reasonable cost of providing the service sought; but in calculating the cost of providing a service to a person the Commission may include a reasonable share of expenditure which is referable only indirectly to the provision of that service⁵.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'personal licence' see PARA 400.

3 Gambling Act 2005 s 106(1) (s 106 applied for these purposes by s 128(1)).

4 Gambling Act 2005 s 106(2) (as applied: see note 3).

5 Gambling Act 2005 s 106(3) (as applied: see note 3).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(ii) Personal Licences/D. MAINTENANCE OF LICENCES/(A) Maintenance Fees, Register of Licences and Replacement of Licences/419. Gambling Commission's power to issue copy of lost, stolen or damaged licence.

419. Gambling Commission's power to issue copy of lost, stolen or damaged licence.

The Gambling Commission¹ may make arrangements to issue to a licensee² on request a copy of a personal licence³ which has been lost, stolen or damaged⁴. The arrangements may, in particular, include a requirement:

- 1239 (1) for the payment of a fee not exceeding such sum as may be prescribed for these purposes by the Secretary of State⁵ by regulations⁶;
- 1240 (2) in the case of a licence being lost or stolen, that the licensee has complied with specified arrangements for reporting the loss or theft to the police⁷.

A copy of a licence issued under these provisions is to be treated as if it were the licence⁸.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'licensee' see PARA 409 note 5.

3 As to the meaning of 'personal licence' see PARA 400.

4 Gambling Act 2005 s 107(1) (s 107 applied for these purposes by s 128(1)).

5 As to the Secretary of State see PARA 2.

6 Gambling Act 2005 s 107(2)(a) (as applied: see note 4). The fee for issuing a copy of a personal licence under s 107 (as so applied) must not exceed £25: Gambling (Personal Licence Fees) Regulations 2006, SI 2006/3285, reg 6.

7 Gambling Act 2005 s 107(2)(b) (as applied: see note 4).

8 Gambling Act 2005 s 107(3) (as applied: see note 4).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(B) LICENCE HOLDER'S DUTIES

420. Licence holder's duty to produce licence.

A constable¹ or enforcement officer² may require the holder³ of a personal licence⁴ to produce it to the constable or enforcement officer:

- 1241 (1) within a specified period⁵;
- 1242 (2) while the individual is carrying on a licensed activity⁶, immediately⁷; or
- 1243 (3) while the individual is on premises⁸ in respect of which a premises licence⁹ has effect, immediately¹⁰.

A licensee¹¹ commits an offence if he fails without reasonable excuse to comply with such a requirement¹².

1 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

2 As to the meaning of 'enforcement officer' see PARA 342 note 7.

3 As to the meaning of 'holder' see PARA 409 note 11.

4 As to the meaning of 'personal licence' see PARA 400.

5 Gambling Act 2005 s 108(1) (s 108 applied by s 128(1)); s 134(1)(a).

6 As to the meaning of 'licensed activity' see PARA 406 note 3.

7 Gambling Act 2005 s 134(1)(b).

8 As to the meaning of 'premises' see PARA 311 note 5.

9 As to premises licences see PARA 460 et seq.

10 Gambling Act 2005 s 134(1)(b), (c).

11 As to the meaning of 'licensee' see PARA 409 note 5.

12 Gambling Act 2005 s 108(2) (as applied: see note 5); s 134(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 108(3) (as applied: see note 5); s 134(3). As to the standard scale see PARA 17 note 21.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(ii) Personal Licences/D. MAINTENANCE OF LICENCES/(B) Licence Holder's Duties/421. Licence holders' notification duties if convicted of offence.

421. Licence holders' notification duties if convicted of offence.

If the holder¹ of a personal licence² is convicted:

1244 (1) of an offence by or before a court in Great Britain³, or of a relevant offence⁴ by or before a court outside Great Britain, he must as soon as is reasonably practicable notify⁵ the Gambling Commission⁶ of his conviction⁷ and of any sentence passed in respect of it⁸;

1245 (2) of a relevant offence by or before a court in Great Britain he must immediately inform the court that he is the holder of a personal licence⁹.

If the holder of a personal licence is convicted of a relevant offence by or before a court, whether inside or outside Great Britain), the holder¹⁰ of any relevant operating licence¹¹ must also notify the Commission of the conviction, and of any sentence passed in respect of it, as soon as is reasonably practicable after becoming aware of it¹². This duty is in addition to any duty of the holder of the personal licence under heads (1) and (2) above¹³.

A person commits an offence if he fails without reasonable excuse to comply with any of these requirements¹⁴.

1 As to the meaning of 'holder' see PARA 409 note 11.

2 As to the meaning of 'personal licence' see PARA 400.

3 As to the meaning of 'Great Britain' see PARA 16 note 8.

4 As to the meaning of 'relevant offence' see PARA 353 note 11.

5 As to the method of notification see PARA 356 note 5.

6 As to the Gambling Commission see PARA 4.

7 As to the meaning of 'conviction' see PARA 355 note 22.

8 Gambling Act 2005 s 109(1), (3) (s 109 applied for these purposes by s 128(1)).

9 Gambling Act 2005 s 109(2) (as applied: see note 8).

10 As to the meaning of 'holder' see PARA 350 note 5.

11 For these purposes, an operating licence is relevant if the holder of the personal licence acts in connection with activities authorised by the operating licence: Gambling Act 2005 s 138(5). As to the meaning of 'operating licence' see PARA 349 note 2.

12 Gambling Act 2005 s 138(1), (2).

13 Gambling Act 2005 s 138(6).

14 Gambling Act 2005 s 109(4) (as applied: see note 8); s 138(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 109(5) (as so applied); s 138(4). As to the standard scale see PARA 17 note 21.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(ii) Personal Licences/D. MAINTENANCE OF LICENCES/(C) Change of Circumstance/422. Change of circumstance.

(C) CHANGE OF CIRCUMSTANCE

422. Change of circumstance.

The Secretary of State¹ may make regulations requiring the holder² of a personal licence³:

- 1246 (1) to notify⁴ the Gambling Commission⁵ of any change of circumstance of a prescribed⁶ kind in relation to him or to a licensed activity⁷; and
- 1247 (2) to give the Commission prescribed details of the change⁸.

If a change of circumstance so notified falsifies information contained⁹ in the personal licence the notification must be accompanied by the prescribed fee, and by either the licence or an application to the Commission for the issue of a copy¹⁰ of the licence¹¹.

Where notification is accompanied by the licence, the Commission must make such alteration to the information contained in the licence as appears to it to be required by the change in circumstance, and must return the licence to the licensee¹². Where the notification is accompanied by an application for a copy of the licence, the Commission must, if it grants the application, issue the copy in a form which appears to the Commission to reflect the change in circumstance¹³.

The holder of a personal licence commits an offence if he fails without reasonable excuse to comply with regulations under these provisions¹⁴.

The above provisions do not prevent the imposition of a requirement to notify the Commission of a specified change of circumstance by way of the attachment of a condition to a personal licence¹⁵.

1 As to the Secretary of State see PARA 2.

2 As to the meaning of 'holder' see PARA 409 note 11.

3 As to the meaning of 'personal licence' see PARA 400.

4 As to the method of notification see PARA 356 note 5.

5 As to the Gambling Commission see PARA 4.

6 For these purposes, 'prescribed' means prescribed by regulations under the Gambling Act 2005 s 101: s 101(5) (s 101 applied for these purposes by s 128(1)).

7 As to the meaning of 'licensed activity' see PARA 406 note 3.

8 Gambling Act 2005 s 101(1) (as applied: see note 6). At the date at which this volume states the law, no such regulations had been made.

9 Ie in accordance with the Gambling Act 2005 s 66 (as applied for these purposes): see PARA 404.

10 Ie under the Gambling Act 2005 s 107 (as applied for these purposes): see PARA 419.

11 Gambling Act 2005 s 101(2) (as applied: see note 6).

12 Gambling Act 2005 s 101(3) (as applied: see note 6). As to the meaning of 'licensee' see PARA 409 note 5.

13 Gambling Act 2005 s 101(4) (as applied: see note 6).

14 Gambling Act 2005 s 101(6) (as applied: see note 6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 101(7) (as applied: see note 6). As to the standard scale see PARA 17 note 21.

15 Gambling Act 2005 s 101(8) (as applied: see note 6). As to the Commission's power to attach conditions see ss 75, 77 (as applied for these purposes); and PARA 409.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(D) VARIATION AND AMENDMENT OF LICENCES

423. Application to vary licence.

The holder¹ of a personal licence² may apply to the Gambling Commission³ to vary the licence by:

- 1248 (1) adding, amending or removing a licensed activity⁴;
- 1249 (2) amending another detail of the licence; or
- 1250 (3) adding, amending or removing an individual condition attached⁵ to the licence⁶.

An application for variation must comply with the relevant requirements⁷ and be accompanied by the prescribed fee⁸. It must also be accompanied by a statement of the variation sought, and by either the licence to be varied, or a statement explaining why it is not reasonably practicable to produce the licence⁹.

The relevant statutory provisions¹⁰ apply in relation to an application for variation as they apply in relation to an application for a licence subject to these provisions¹¹ and with any other necessary modifications¹². Regulations¹³ which relate to an application for a personal licence may make:

- 1251 (a) provision which applies only in the case of an application for variation;
- 1252 (b) provision which does not apply in the case of an application for variation;
- 1253 (c) different provision in relation to an application for variation from that made in relation to an application for a personal licence;
- 1254 (d) different provision in relation to applications for variations of different kinds¹⁴.

A licence may not be varied under these provisions so as to authorise anyone other than the person to whom it was issued to provide facilities for gambling¹⁵. In granting an application for variation the Commission must specify a time when the variation is to begin to have effect, and may make transitional provision¹⁶.

1 As to the meaning of 'holder' see PARA 409 note 11.

2 As to the meaning of 'personal licence' see PARA 400.

3 As to the Gambling Commission see PARA 4.

4 As to the meaning of 'licensed activity' see PARA 406 note 3.

5 le under the Gambling Act 2005 s 77 (as applied for these purposes): see PARA 409.

6 See the Gambling Act 2005 s 104(1) (s 104 applied for these purposes by s 128(1)).

7 le the requirements of the Gambling Act 2005 s 69 (as applied for these purposes): see PARA 405.

8 See the Gambling Act 2005 s 104(3); and the text and notes 10-12. The fee to accompany an application under s 104(1)(a) (see head (1) in the text) to vary a personal licence is: (1) 25% of the fee payable in respect of an application for a licence of the kind sought to be varied (determined in accordance with the Gambling (Personal Licence Fees) Regulations 2006, SI 2006/3285, reg 3(1): see PARA 405 note 15), if the application is to add or amend a licensed activity; or (2) £25, if the application is to remove a licensed activity: reg 5(1). The fee to accompany an application under the Gambling Act 2005 s 104(1)(b) (see head (2) in the text) to vary a personal licence is £25: Gambling (Personal Licence Fees) Regulations 2006, SI 3285, reg 5(2). The fee to accompany an application under the Gambling Act 2005 s 104(1)(c) (see head (3) in the text) to vary a personal licence is 25% of the fee payable in respect of an application for a licence of the kind sought to be varied (determined in accordance with the Gambling (Personal Licence Fees) Regulations 2006, SI 3285, reg 3(1)): reg 5(3). In determining the fee to which a percentage reduction is made under reg 5, reg 3(2), (3) (see PARA 405 note 15) does not apply: reg 5(4).

9 Gambling Act 2005 s 104(5) (as applied: see note 6).

10 Ie the provisions of the Gambling Act 2005 Pt 5 (ss 65-126, Sch 7), as applied for these purposes by s 128(1): see PARAS 403 et seq, 424 et seq.

11 Ie subject to the provisions of the Gambling Act 2005 s 104 (as applied for these purposes).

12 Gambling Act 2005 s 104(3) (as applied: see note 6). As to applications for personal licences see PARA 405 et seq.

13 Ie regulations under the Gambling Act 2005 Pt 5.

14 Gambling Act 2005 s 104(4) (as applied: see note 6); and see note 8.

15 Gambling Act 2005 s 104(2) (as applied: see note 6). As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

16 Gambling Act 2005 s 104(6) (as applied: see note 6).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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424. Amendment of licences.

The Gambling Commission¹ may require the holder² of a personal licence³ to submit it to the Commission for the purpose of amendment to reflect:

- 1255 (1) a general variation of conditions⁴;
- 1256 (2) a change of circumstance which has been notified⁵;
- 1257 (3) the grant of an application for variation⁶;
- 1258 (4) the attachment of an additional condition, or the amendment of a condition⁷;
- 1259 (5) anything done under the relevant⁸ statutory provisions⁹.

A licensee¹⁰ must comply with such a requirement within the period of 14 days beginning with the day on which he receives notice¹¹ of the requirement¹². A person commits an offence if he fails without reasonable excuse to comply with a requirement imposed under the above provisions¹³.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'holder' see PARA 409 note 11.

3 As to the meaning of 'personal licence' see PARA 400.

4 Ie under the Gambling Act 2005 s 75 (as applied for these purposes): see PARA 409. This is without prejudice to s 76(4)(c) (as applied for these purposes: see PARA 409): s 105(5) (s 105 applied for these purposes by s 128(1)).

5 Ie under the Gambling Act 2005 s 101 (as applied for these purposes): see PARA 422.

6 Ie under the Gambling Act 2005 s 104 (as applied for these purposes): see PARA 423.

7 Ie under the Gambling Act 2005 s 117 (as applied for these purposes): see PARA 429.

8 Ie under the Gambling Act 2005 Pt 6 (ss 127-139): see PARAS 400 et seq, 425 et seq.

9 Gambling Act 2005 s 105(1) (as applied (see note 4); modified by virtue of SI 2006/3267, so as to omit the reference in the Gambling Act 2005 s 105 to s 112).

10 As to the meaning of 'licensee' see PARA 409 note 5.

11 As to the method of giving notice see PARA 356 note 5.

12 Gambling Act 2005 s 105(2) (as applied: see note 4).

13 Gambling Act 2005 s 105(3) (as applied: see note 4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 105(4) (as so applied). As to the standard scale see PARA 17 note 21.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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425. Surrender of licences.

A personal licence¹ ceases to have effect if the licensee² notifies³ the Gambling Commission⁴ of his intention to surrender the licence, and gives the Commission either the licence, or a written statement explaining why it is not reasonably practicable to produce the licence⁵.

- 1 As to the meaning of 'personal licence' see PARA 400.
- 2 As to the meaning of 'licensee' see PARA 409 note 5.
- 3 As to the method of notification see PARA 356 note 5.
- 4 As to the Gambling Commission see PARA 4.
- 5 Gambling Act 2005 s 113 (applied for these purposes by s 128(1)).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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426. Lapse of licences.

A personal licence¹ lapses if the licensee² dies³ or becomes, in the opinion of the Gambling Commission⁴ as notified⁵ to the licensee, incapable of carrying on the licensed activities⁶ by reason of mental or physical incapacity⁷. Such a licence also lapses if the licensee becomes bankrupt⁸ or if sequestration of the licensee's estate⁹ is awarded¹⁰.

1 As to the meaning of 'personal licence' see PARA 400.

2 As to the meaning of 'licensee' see PARA 409 note 5.

3 Gambling Act 2005 s 114(1)(a) (s 114(1) applied for these purposes by s 128(1)).

4 As to the Gambling Commission see PARA 4.

5 As to the method of notification see PARA 356 note 5.

6 As to the meaning of 'the licensed activities' see PARA 406 note 3.

7 Gambling Act 2005 s 114(1)(b) (as applied: see note 3).

8 Ie within the meaning of the Insolvency Act 1986 s 381: see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 84.

9 Ie under the Bankruptcy (Scotland) Act 1985 s 12(1).

10 Gambling Act 2005 s 114(1)(c), (d) (as applied: see note 3).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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427. Forfeiture and disqualification.

Where the holder¹ of a personal licence² is convicted of a relevant offence³ by or before a court in Great Britain⁴, the court may order forfeiture of the licence⁵. Forfeiture under these provisions is to be on such terms, which may include terms as to suspension, as may be specified by:

- 1260 (1) the court which orders forfeiture;
- 1261 (2) a court to which an appeal against the conviction⁶, or against any order made on the conviction, has been or could be made; or
- 1262 (3) the High Court, if hearing proceedings relating to the conviction⁷;

and the terms on which a forfeiture order is made must, in particular, include a requirement that the licensee deliver to the Gambling Commission⁸, within such time as the order may specify, either the licence or a statement explaining why it is not reasonably practicable to produce the licence⁹.

Subject to any express provision made under heads (1) to (3) above, a personal licence ceases to have effect on the making of a forfeiture order¹⁰. As soon as is reasonably practicable after making an order for forfeiture under these provisions, the court must notify¹¹ the Commission¹².

A court which may order the forfeiture of an individual's personal licence under the above provisions may, whether or not it makes an order for forfeiture, make an order disqualifying the individual from holding a personal licence for a specified period, not exceeding ten years, beginning with the date of the order¹³. The Commission must not issue a personal licence to a person while such a disqualification order has effect in respect of him¹⁴.

1 As to the meaning of 'holder' see PARA 409 note 5.

2 As to the meaning of 'personal licence' see PARA 400.

3 As to the meaning of 'relevant offence' see PARA 353 note 11.

4 As to the meaning of 'Great Britain' see PARA 16 note 8.

5 Gambling Act 2005 s 115(1) (s 115 applied for these purposes by s 128(1)).

6 As to the meaning of 'conviction' see PARA 355 note 22.

7 Gambling Act 2005 s 115(2) (as applied: see note 5).

8 As to the Gambling Commission see PARA 4.

9 Gambling Act 2005 s 115(4) (as applied: see note 5).

10 Gambling Act 2005 s 115(3) (as applied: see note 5).

11 As to the method of notification see PARA 356 note 5.

12 Gambling Act 2005 s 115(5) (as applied: see note 5).

13 Gambling Act 2005 s 136(1). Section 115(2)-(5) (as applied by s 128(1)) (see the text and notes 6-12) has effect in relation to an order under s 136, and in relation to a licence held by the person disqualified, as it has effect in relation to an order under s 115 and in relation to the licence forfeited: s 136(3).

14 Gambling Act 2005 s 136(2).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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E. REGULATION OF LICENSEES BY THE GAMBLING COMMISSION

428. Licence holder's duty to give information to the Gambling Commission.

The holder¹ of a personal licence² must comply with a request of the Gambling Commission³ to:

- 1263 (1) produce a written or electronic record relating to the licensed activities⁴;
- 1264 (2) provide a copy of a written or electronic record relating to the licensed activities;
- 1265 (3) provide information about the licensed activities⁵.

Such a request may specify the form and manner in which a record or information is to be produced or provided and the period within which a record or information is to be produced or provided⁶; and the Commission may retain anything provided under heads (1) to (3) above⁷. The Commission may, however, exercise a power under these provisions only for the purpose of:

- 1266 (a) determining whether activities have been carried on in purported reliance on the licence but not in accordance with a condition of the licence; or
- 1267 (b) determining the suitability of the licensee⁸ to carry on the licensed activities⁹.

A person commits an offence if he fails without reasonable excuse to comply with such a request¹⁰.

1 As to the meaning of 'holder' see PARA 409 note 11.

2 As to the meaning of 'personal licence' see PARA 400.

3 As to the Gambling Commission see PARA 4.

4 As to the meaning of 'the licensed activities' see PARA 406 note 3.

5 Gambling Act 2005 s 122(1) (s 122 applied for these purposes by s 128(1)).

6 Gambling Act 2005 s 122(2) (as applied: see note 5).

7 Gambling Act 2005 s 122(3) (as applied: see note 5).

8 As to the meaning of 'licensee' see PARA 409 note 5.

9 Gambling Act 2005 s 122(4) (as applied: see note 5).

10 Gambling Act 2005 s 122(5) (as applied: see note 5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 122(6) (as applied: see note 5). As to the standard scale see PARA 17 note 21.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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429. Gambling Commission's powers of review.

The Gambling Commission¹ may review any matter connected with the performance of the functions authorised by the personal licence² if the Commission:

- 1268 (1) has reason to suspect that the functions have not been performed in accordance with a condition of the licence;
- 1269 (2) believes that the licensee³ has acquired a conviction⁴ for a relevant offence⁵; or
- 1270 (3) for any reason⁶ suspects that the licensee may be unsuitable to carry on the licensed activities⁷ or thinks that a review would be appropriate⁸.

Before commencing such a review of a personal licence the Commission must notify⁹ the licensee and inform him of the procedure to be followed in the conduct of the review¹⁰. In conducting such a review of a personal licence the Commission must give the licensee an opportunity to make representations and may give other persons an opportunity to make representations¹¹.

Following a review under the above provisions the Commission may:

- 1271 (a) give the holder¹² of a personal licence a warning;
- 1272 (b) attach an additional condition to a licence¹³;
- 1273 (c) remove or amend a condition attached to a licence¹⁴;
- 1274 (d) exercise the power¹⁵ to suspend a licence;
- 1275 (e) exercise the power¹⁶ to revoke a licence;
- 1276 (f) exercise the power¹⁷ to impose a penalty¹⁸.

In determining what action to take following a review the Commission may have regard to a warning under head (a) above given to the licensee following an earlier review, whether or not of that licence¹⁹. Where the Commission determines to take action under heads (a) to (f) above in respect of a licence it must as soon as is reasonably practicable notify²⁰ the licensee of the action and of the Commission's reasons²¹.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'personal licence' see PARA 400.

3 As to the meaning of 'licensee' see PARA 409 note 5.

4 I.e a conviction of a kind mentioned in the Gambling Act 2005 s 71(1) (as applied for these purposes): see PARA 407. As to the meaning of 'conviction' see PARA 355 note 22.

5 As to the meaning of 'relevant offence' see PARA 353 note 11.

6 For these purposes a reason (1) may, in particular, relate to the receipt of a complaint about the performance of the functions authorised by the licence; (2) need not relate to any suspicion or belief about the performance of those functions: Gambling Act 2005 s 116(3) (ss 116, 117 applied for these purposes by s 128(1)); s 116(2), (3) substituted for these purposes, and s 117(1) amended, by SI 2006/3267). Note that the Gambling Act 2005 s 116(1) does not apply in relation to personal licences: see s 135.

- 7 As to the meaning of 'licensed activities' see PARA 406 note 3.
- 8 Gambling Act 2005 s 116(2) (as substituted: see note 6).
- 9 As to the method of notification see PARA 356 note 5.
- 10 Gambling Act 2005 s 116(4) (as applied: see note 6).
- 11 Gambling Act 2005 s 116(5) (as applied: see note 6).
- 12 As to the meaning of 'holder' see PARA 409 note 11.
- 13 Ie under the Gambling Act 2005 s 77 (as applied for these purposes): see PARA 409.
- 14 See note 13.
- 15 Ie under the Gambling Act 2005 s 118 (as applied for these purposes): see PARA 430.
- 16 Ie under the Gambling Act 2005 s 119 (as applied for these purposes): see PARA 431.
- 17 Ie under the Gambling Act 2005 s 121 (as applied for these purposes): see PARA 432.
- 18 Gambling Act 2005 s 117(1) (as applied and amended: see note 6).
- 19 Gambling Act 2005 s 117(3) (as applied: see note 6).
- 20 As to the method of notification see PARA 356 note 5.
- 21 Gambling Act 2005 s 117(2) (as applied: see note 6).

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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430. Suspension of licence.

The Gambling Commission¹ may suspend a personal licence² if following a review³ the Commission thinks that any of the conditions specified in heads (1) to (4) below applies⁴. The Commission may also suspend a personal licence if at the time of deciding to conduct a review⁵, or at any time during the course of a review, the Commission suspects that any of those conditions may apply⁶. The conditions referred to are:

- 1277 (1) that a licensed activity⁷ is being or has been carried on in a manner which is inconsistent with the licensing objectives⁸;
- 1278 (2) that a condition of the licence has been breached;
- 1279 (3) that the licensee⁹ has failed to co-operate with a review¹⁰; or
- 1280 (4) that the licensee is unsuitable to carry on the licensed activities¹¹.

The Commission may suspend a personal licence if it thinks that any of the following conditions applies¹². Those conditions are:

- 1281 (a) that the licensee has failed to comply with a requirement of regulations requiring notification of a change of circumstance¹³; or
- 1282 (b) that the licensee has failed to submit the licence to the Commission for amendment when required¹⁴ to do so¹⁵.

Where the Commission suspends a personal licence it must specify the time when the suspension takes effect¹⁶; and it must specify either:

- 1283 (i) a period for which the suspension is to last¹⁷; or
- 1284 (ii) that the suspension is to last until some specified event occurs, which may be the giving of a notice¹⁸ by the Commission¹⁹.

The Commission may make saving or transitional provision²⁰.

A personal licence has no effect in respect of anything done while it is suspended under these provisions²¹.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'personal licence' see PARA 400.

3 Ie a review under the Gambling Act 2005 s 116(2) (as applied and substituted for these purposes): see PARA 429.

4 Gambling Act 2005 s 118(1) (ss 118, 120 applied for these purposes by s 128(1)).

5 See note 3.

6 Gambling Act 2005 s 118(2) (as applied: see note 4).

7 As to the meaning of 'licensed activity' see PARA 406 note 3.

8 As to the licensing objectives see PARA 331.

9 As to the meaning of 'licensee' see PARA 409 note 5.

10 See note 3.

11 Gambling Act 2005 s 120(1) (as applied: see note 4). In considering a licensee's suitability for the purpose of s 120(1)(d) (see head (4) in the text) the Commission may, in particular, have regard to: (1) the integrity of the licensee; (2) the competence of the licensee to carry on the licensed activities in a manner consistent with pursuit of the licensing objectives; (3) the financial and other circumstances of the licensee (and, in particular, the resources available for the purpose of carrying on the licensed activities): s 120(3) (as so applied; amended for these purposes by SI 2006/3267).

12 Gambling Act 2005 s 118(3) (as applied: see note 4).

13 The regulations under the Gambling Act 2005 s 101 (as applied for these purposes): see PARA 422.

14 The under the Gambling Act 2005 s 105 (as applied for these purposes): see PARA 424.

15 Gambling Act 2005 s 120(2) (as applied: see note 4).

16 Gambling Act 2005 s 118(4)(a) (as applied: see note 4).

17 That period is without prejudice to the re-exercise of the power under the Gambling Act 2005 s 118(1) on or after the expiry of that period: s 118(4)(b)(i) (as applied: see note 4).

18 As to the method of giving notice see PARA 356 note 5.

19 Gambling Act 2005 s 118(4)(b) (as applied: see note 4).

20 See the Gambling Act 2005 s 118(4)(c) (as applied: see note 4).

21 Gambling Act 2005 s 118(5) (as applied: see note 4).

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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431. Revocation of licence.

The Gambling Commission¹ must revoke a personal licence² if the licensee³ fails to pay any maintenance fee payable⁴; but the Commission may disapply this provision if it thinks that a failure to pay is attributable to administrative error⁵.

The Commission may revoke a personal licence if following a review⁶ it thinks that any of the following conditions applies⁷. Those conditions are:

- 1285 (1) that a licensed activity⁸ is being or has been carried on in a manner which is inconsistent with the licensing objectives⁹;
- 1286 (2) that a condition of the licence has been breached;
- 1287 (3) that the licensee has failed to co-operate with a review¹⁰; or
- 1288 (4) that the licensee is unsuitable to carry on the licensed activities¹¹.

The Commission may also revoke a personal licence if it thinks that any of the following conditions applies¹². Those conditions are:

- 1289 (a) that the licensee has failed to comply with a requirement of regulations requiring notification of a change of circumstance¹³; or
- 1290 (b) that the licensee has failed to submit the licence to the Commission for amendment when required¹⁴ to do so¹⁵.

Where the Commission revokes a personal licence it must specify the time when the revocation takes effect¹⁶. The Commission may make saving or transitional provision¹⁷.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'personal licence' see PARA 349 note 2.

3 As to the meaning of 'licensee' see PARA 409 note 5.

4 Ie any fee payable in accordance with the Gambling Act 2005 s 132: see PARA 417.

5 Gambling Act 2005 s 119(3) (ss 119, 120 applied for these purposes by s 128(1); s 119(3) substituted for these purposes by SI 2006/3267).

6 Ie a review under the Gambling Act 2005 s 116(2) (as applied for these purposes): see PARA 429.

7 Gambling Act 2005 s 119(1) (as applied: see note 5).

8 As to the meaning of 'licensed activity' see PARA 406 note 3.

9 As to the licensing objectives see PARA 331.

10 See note 6.

11 Gambling Act 2005 s 120(1) (as applied: see note 5). As to the matters to which the Commission may have regard in considering a licensee's suitability for the purpose of s 120(1)(d) (see head (4) in the text), see s 120(3) (as applied for these purposes), cited in PARA 430 note 11.

- 12 Gambling Act 2005 s 119(2) (as applied: see note 5).
- 13 le regulations under the Gambling Act 2005 s 101 (as applied for these purposes): see PARA 422.
- 14 le under the Gambling Act 2005 s 105 (as applied for these purposes): see PARA 424.
- 15 Gambling Act 2005 s 120(2) (as applied: see note 5).
- 16 Gambling Act 2005 s 119(4)(a) (as applied: see note 5).
- 17 See the Gambling Act 2005 s 119(4)(b) (as applied: see note 5).

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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432. Financial penalty where licence condition is breached.

The Gambling Commission¹ may require the holder² of a personal licence³ to pay a penalty if the Commission thinks that a condition of the licence has been breached⁴. Before imposing a requirement on a licensee⁵ to pay a penalty under these provisions the Commission must notify⁶ him:

- 1291 (1) that the Commission proposes to require him to pay a penalty;
- 1292 (2) of the amount of the proposed penalty;
- 1293 (3) of the Commission's reasons; and
- 1294 (4) of a period within which he may make representations to the Commission⁷.

The Commission may not give such a notice in respect of the breach of a condition after the end of the period of two years beginning with either the day on which the breach occurred or began to occur, or, if later, the day on which the breach came to the knowledge of the Commission⁸.

After the end of the period specified under head (4) above the Commission may give the licensee a notice requiring him to pay a penalty under these provisions⁹. A penalty imposed by such a notice:

- 1295 (a) is payable by the licensee to the Commission;
- 1296 (b) may be enforced as if it were a debt owed by the licensee to the Commission; and
- 1297 (c) on receipt by the Commission must be paid into the Consolidated Fund¹⁰ after deduction of a sum which represents the direct costs to the Commission of, and a reasonable share of expenditure by the Commission which is indirectly referable to, either the investigation by the Commission¹¹ of the matter in respect of which the penalty is imposed or the imposition and enforcement of the penalty¹².

The Commission must prepare a statement setting out the principles to be applied by the Commission in exercising the powers under these provisions¹³. It must review the statement from time to time¹⁴ and revise the statement when the Commission thinks it necessary¹⁵. The statement so maintained must, in particular, require the Commission in considering the imposition of a penalty under these provisions or the amount of a penalty to have regard, in particular, to:

- 1298 (i) the seriousness of the breach of condition in respect of which the penalty is proposed;
- 1299 (ii) whether or not the licensee knew or ought to have known of the breach; and
- 1300 (iii) the nature of the licensee, including, in particular, his financial resources¹⁶.

Before preparing or revising such a statement the Commission must consult the Secretary of State¹⁷, the Lord Chancellor, and such other persons as the Commission thinks appropriate¹⁸. As

soon as is reasonably practicable the Commission must send the statement and any revision to the Secretary of State, and must publish the statement and any revision¹⁹. The Commission must have regard to the statement when exercising a power under the above provisions²⁰.

- 1 As to the Gambling Commission see PARA 4.
- 2 As to the meaning of 'holder' see PARA 409 note 5.
- 3 As to the meaning of 'personal licence' see PARA 400.
- 4 Gambling Act 2005 s 121(1) (s 121 applied for these purposes by s 128(1)).
- 5 As to the meaning of 'licensee' see PARA 409 note 5.
- 6 As to the method of notification see PARA 356 note 5.
- 7 Gambling Act 2005 s 121(2) (as applied: see note 4).
- 8 Gambling Act 2005 s 121(3) (as applied: see note 4).
- 9 Gambling Act 2005 s 121(4) (as applied: see note 4).
- 10 As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.
- 11 As to whether by review under the Gambling Act 2005 s 116 (as applied for these purposes) (see PARA 429) or otherwise.
- 12 Gambling Act 2005 s 121(5) (as applied: see note 4).
- 13 Gambling Act 2005 s 121(6)(a) (as applied: see note 4). See *Statement of Principles for Determining Financial Penalties* (June 2007, Gambling Commission), set out in Paterson's Licensing Acts (116th Edn, 2008) at para 3.2076. That statement is also published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk.
- 14 Gambling Act 2005 s 121(6)(b) (as applied: see note 4).
- 15 Gambling Act 2005 s 121(6)(c) (as applied: see note 4).
- 16 Gambling Act 2005 s 121(7) (as applied: see note 4).
- 17 As to the Secretary of State see PARA 2.
- 18 Gambling Act 2005 s 121(8) (as applied: see note 4).
- 19 Gambling Act 2005 s 121(6)(d) (as applied: see note 4).
- 20 Gambling Act 2005 s 121(6)(e) (as applied: see note 4).

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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433. Gambling Commission's duty to notify holder of operating licence of relevant matters.

Where the Gambling Commission¹:

- 1301 (1) suspends² a personal licence³;
- 1302 (2) revokes⁴ a personal licence;
- 1303 (3) is informed by a court of the making of a forfeiture order in respect of a personal licence⁵; or
- 1304 (4) is informed by a court of the making of a disqualification order⁶,

then, if the Commission believes that the holder⁷ of the personal licence, or the subject of the disqualification order, is providing services to the holder⁸ of an operating licence⁹ in connection with the licensed activities¹⁰, the Commission must as soon as is reasonably practicable notify¹¹ the holder of the operating licence of the matter specified in heads (1) to (4) above¹².

- 1 As to the Gambling Commission see PARA 4.
- 2 Ie under the Gambling Act 2005 s 118 (as applied by s 128(1)): see PARA 430.
- 3 As to the meaning of 'personal licence' see PARA 400.
- 4 Ie under the Gambling Act 2005 s 119 (as applied by s 128(1)): see PARA 431.
- 5 Ie under the Gambling Act 2005 s 115 (as applied by s 128(1)): see PARA 427.
- 6 Ie under the Gambling Act 2005 s 136: see PARA 427.
- 7 As to the meaning of 'holder' in relation to a personal licence see PARA 409 note 11.
- 8 As to the meaning of 'holder' in relation to an operating licence see PARA 350 note 5.
- 9 As to the meaning of 'operating licence' see PARA 349 note 2.
- 10 As to the meaning of 'licensed activities' see PARA 406 note 3.
- 11 As to the method of notification see PARA 356 note 5.
- 12 Gambling Act 2005 s 137(1), (2).

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(iii) Appeals with regard to Operating Licences and Personal Licences

A. RIGHTS OF APPEAL AND LEGAL ASSISTANCE

434. Rights of appeal to the Gambling Appeals Tribunal.

Where the Gambling Commission¹:

- 1305 (1) determines an application² for the issue or renewal of an operating licence³ or a personal licence⁴, the applicant may appeal to the Gambling Appeals Tribunal ('the Tribunal')⁵;
- 1306 (2) attaches an individual condition to such a licence⁶, the licensee⁷ may appeal to the Tribunal⁸;
- 1307 (3) determines an application for a determination that an operating licence is to continue to have effect where there is a change of corporate control⁹, the applicant may appeal to the Tribunal¹⁰;
- 1308 (4) determines an application for the variation of an operating licence or a personal licence¹¹, the applicant may appeal to the Tribunal¹²;
- 1309 (5) gives a notice that the licensee has become, in the Commission's opinion, unable to carry out the licensed activities by reason of physical or mental disability¹³, the licensee may appeal to the Tribunal¹⁴;
- 1310 (6) takes, or determines to take, regulatory action¹⁵ in respect of a licence, the licensee may appeal to the Tribunal¹⁶;
- 1311 (7) takes action, or determines to take action, to suspend a licence¹⁷, the licensee may appeal to the Tribunal¹⁸;
- 1312 (8) takes action, or determines to take action, to revoke a licence¹⁹, the licensee may appeal to the Tribunal²⁰;
- 1313 (9) gives a notice imposing a financial penalty on a licensee²¹, the licensee may appeal to the Tribunal²².

1 As to the Gambling Commission see PARA 4.

2 Ie an application under the Gambling Act 2005 s 69 (see PARA 353) or s 112 (see PARA 390), including s 69 as applied by s 128 (see PARA 405).

3 As to the meaning of 'operating licence' see PARA 349 note 2.

4 As to the meaning of 'personal licence' see PARA 400.

5 Gambling Act 2005 s 141(1). As to the Gambling Appeals Tribunal see PARA 6.

6 Ie under the Gambling Act 2005 s 77 (see PARA 357), including s 77 as applied by s 128 (see PARA 409).

7 As to the meaning of 'licensee' in relation to (1) an operating licence see PARA 349 note 5; (2) a personal licence see PARA 409 note 5.

8 Gambling Act 2005 s 141(2).

9 Ie an application under the Gambling Act 2005 s 102(2)(b): see PARA 385.

- 10 Gambling Act 2005 s 141(3).
- 11 le under the Gambling Act 2005 s 104 (see PARA 386), including s 104 as applied by s 128 (see PARA 423).
- 12 Gambling Act 2005 s 141(4).
- 13 le a notice under the Gambling Act 2005 s 114(1)(b) (see PARA 392), including s 114(1)(b) as applied by s 128 (see PARA 426).
- 14 Gambling Act 2005 s 141(5).
- 15 le action under the Gambling Act 2005 s 117 (see PARA 395), including s 117 as applied by s 128 (see PARA 429).
- 16 Gambling Act 2005 s 141(6).
- 17 le action under the Gambling Act 2005 s 118 (see PARA 396), including s 118 as applied by s 128 (see PARA 430).
- 18 Gambling Act 2005 s 141(7).
- 19 le action under the Gambling Act 2005 s 119 (see PARA 397), including s 119 as applied by s 128 (see PARA 431).
- 20 Gambling Act 2005 s 141(8).
- 21 le a notice under the Gambling Act 2005 s 121(4) (see PARA 398), including s 121(4) as applied by s 128 (see PARA 432).
- 22 Gambling Act 2005 s 141(9).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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435. Scheme for legal assistance.

The Lord Chancellor may by regulations establish a scheme for the provision of legal assistance to appellants to the Gambling Appeals Tribunal ('the Tribunal')¹. Such regulations may, in particular:

- 1314 (1) specify the kinds of assistance that may be provided;
- 1315 (2) specify the classes of person by whom assistance may be provided;
- 1316 (3) make provision about applications to the Tribunal for assistance;
- 1317 (4) require, or enable the Tribunal to require, the provision of information by an applicant for assistance;
- 1318 (5) enable the Tribunal to determine eligibility for assistance by reference to criteria specified in the regulations;
- 1319 (6) make provision for an appeal against refusal of assistance;
- 1320 (7) enable assistance to be granted subject to conditions or restrictions imposed by the Tribunal, which may, in particular, include conditions requiring:
 - 81 120. (a) a person receiving assistance to contribute towards its cost;
 - 121. (b) a person who received assistance to defray all or part of its cost in specified circumstances;
- 82 1321 (8) enable the Tribunal to vary or revoke a decision that assistance should be provided;
- 1322 (9) include provision for enforcement of a duty of payment arising under the regulations, which may, in particular, confer jurisdiction on a court²;

and may apply generally or only in relation to specified kinds of appeal or in specified circumstances³.

Subject to head (7) above, the Lord Chancellor must defray the costs of assistance provided under the scheme⁴.

¹ Gambling Act 2005 s 148(1). As to the Gambling Appeals Tribunal see PARA 6.

² Gambling Act 2005 s 148(2).

³ Gambling Act 2005 s 148(3). At the date at which this volume states the law, no such regulations had been made.

⁴ Gambling Act 2005 s 148(4).

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327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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B. TIMING OF APPEAL; STAY PENDING APPEAL

436. Timing of appeal.

An appeal¹ must be instituted before the end of the period of one month beginning with the date of the decision or action appealed against². The Gambling Appeals Tribunal³ may, however, permit an appeal to be instituted after the end of that period⁴.

1 le an appeal under the Gambling Act 2005 s 141: see PARA 434.

2 Gambling Act 2005 s 142(1).

3 As to the Gambling Appeals Tribunal see PARA 6.

4 Gambling Act 2005 s 142(2).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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437. Stay pending appeal.

A decision or other action under Part 5¹ or Part 6 of the Gambling Act 2005² has no effect while an appeal³:

- 1323 (1) could be brought⁴, ignoring the possibility of an appeal out of time⁵; or
- 1324 (2) has been brought and has not yet been either finally determined or abandoned⁶.

When making a decision or taking other action under Part 5 or Part 6 of that Act, however, the Gambling Commission⁷ may direct that the above provision⁸ is not to apply⁹.

1 le under the Gambling Act 2005 Pt 5 (ss 65-126, Sch 7): see PARA 349 et seq.

2 le under the Gambling Act 2005 Pt 6 (ss 127-139): see PARA 400 et seq.

3 le an appeal under the Gambling Act 2005 s 141: see PARA 434.

4 As to the time for bringing an appeal see PARA 436.

5 le under the Gambling Act 2005 s 142(2): see PARA 436.

6 Gambling Act 2005 s 145(1).

7 As to the Gambling Commission see PARA 4.

8 le the Gambling Act 2005 s 145(1): see the text and notes 1-6.

9 Gambling Act 2005 s 145(2).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(iii) Appeals with regard to Operating Licences and Personal Licences/C. PROCEDURE AND FEES/(A) Procedure; In general/438. Rules about appeals; in general.

C. PROCEDURE AND FEES

(A) PROCEDURE; IN GENERAL

438. Rules about appeals; in general.

The Lord Chancellor may make rules regulating the exercise of a right of appeal¹ to the Gambling Appeals Tribunal² and about practice and procedure in relation to proceedings before the Tribunal³. Such rules may, in particular:

- 1325 (1) specify that a class of person is or is not to be treated as a party to proceedings before the Tribunal for the purpose of the right of appeal from the Tribunal⁴ or for another specified purpose⁵;
- 1326 (2) provide:
- 83 122. (a) that a person commits an offence if without reasonable excuse he fails to comply with a requirement of a specified kind imposed by or in accordance with the rules⁶; and
- 123. (b) that a person guilty of the offence is to be liable on summary conviction to a fine not exceeding level 3 on the standard scale⁷;
- 84 1327 (3) make provision:
- 85 124. (a) about the manner in which appeals are to be instituted;
- 125. (b) about the time in which appeals are to be heard;
- 126. (c) for the president or a member of the Tribunal⁸ to determine an interlocutory or ancillary matter;
- 127. (d) for the president or a member of the Tribunal to give directions requiring parties or witnesses to take specified steps in relation to proceedings, and as to how and when those steps are to be taken;
- 128. (e) about disclosure;
- 129. (f) for joining the Gambling Commission⁹ to proceedings;
- 130. (g) for the suspension by the Tribunal of decisions of the Commission, whether or not they have already taken effect;
- 131. (h) enabling the Tribunal to require persons to attend proceedings for the purpose of giving evidence or producing documents;
- 132. (i) enabling the Tribunal to administer oaths to witnesses;
- 133. (j) about the admission of members of the public to proceedings;
- 134. (k) about representation of parties;
- 135. (l) about withdrawal of proceedings;
- 136. (m) about the recording and promulgation of decisions;
- 137. (n) about the award of costs or expenses, which may, in particular, include an award against the Commission or another party joined in accordance with the rules;
- 138. (o) enabling the Tribunal to vary or revoke a decision, on grounds specified in the rules and within such period as the rules may specify¹⁰.

Subject to such rules, the president of the Tribunal may give directions about its practice and procedure¹¹. Decisions of the Tribunal may be taken by majority vote¹².

Subject to the provisions of the Gambling Act 2005 and to the relevant rules¹³, the Tribunal may regulate its own procedure¹⁴. Where a tribunal consists of more than one member, any matter (other than the final determination¹⁵ of the Tribunal or the setting aside of the final determination of the Tribunal) which is required or authorised by the relevant rules¹⁶ to be done by the Tribunal may be done by the chairman¹⁷.

1 As to rights of appeal see PARA 434.

2 Gambling Act 2005 s 146(1)(a). As to the Gambling Appeals Tribunal see PARA 6.

3 Gambling Act 2005 s 146(1)(b). Rules made by the Lord Chancellor under s 146 must, in particular, make provision for determining whether a case is to be heard by the Tribunal sitting in England or Wales, or in Scotland: Sch 8 para 9(2).

4 le for the purpose of the Gambling Act 2005 s 143(1): see PARA 457.

5 Gambling Act 2005 s 146(2).

6 Gambling Act 2005 s 146(3)(a).

7 Gambling Act 2005 s 146(3)(b). As to the standard scale see PARA 17 note 21.

8 As to the president and members of the Tribunal see PARA 6.

9 As to the Gambling Commission see PARA 4.

10 Gambling Act 2005 Sch 8 para 14.

11 Gambling Act 2005 Sch 8 para 13. As to the directions which may be given see PARA 442.

12 Gambling Act 2005 Sch 8 para 12.

13 le subject to the Gambling Appeals Tribunal Rules 2006, SI 2006/3293: see PARA 440 et seq.

14 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 34(1).

15 As to the meaning of 'final determination' see PARA 440 note 21.

16 le required or authorised by the Gambling Appeals Tribunal Rules 2006, SI 2006/3293: see PARA 440 et seq.

17 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 38. 'Chairman' means the person from time to time acting as chairman of the Tribunal in respect of an appeal: r 2(2). As to the meaning of 'appeal' see PARA 440 note 1.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(B) FEES

439. Fees for bringing an appeal.

The Lord Chancellor may, having consulted the Secretary of State¹, provide by regulations for a fee to be charged for bringing an appeal² to the Gambling Appeals Tribunal³. The regulations may, in particular:

- 1328 (1) provide for different fees to be charged for different classes of case or in different circumstances⁴;
- 1329 (2) enable the Tribunal to reduce or waive a fee having regard to an appellant's circumstances⁵.

The prescribed level of fee charged for bringing an appeal depends on whether the licence is an operating licence⁶ or a personal licence⁷ and also on the type of operating or personal licence that is the subject matter of the appeal⁸. No such fee is payable by an appellant who, at the time that the fee would otherwise become payable, is in receipt of any qualifying benefit⁹. Furthermore, where the payment of any prescribed fee would, owing to the exceptional circumstances of the particular case, involve undue financial hardship to the appellant, the Tribunal may reduce or waive the fee¹⁰. Where a fee has been paid at a time:

- 1330 (a) when it was not payable¹¹, the fee must be refunded;
- 1331 (b) when the Tribunal, if it had been aware of all the circumstances, would have reduced the fee¹², the amount by which the fee would have been reduced must be refunded; and
- 1332 (c) when the Tribunal, if it had been aware of all the circumstances, would have waived the fee¹³, the fee must be refunded¹⁴;

but no refund may be made under heads (a) to (c) above unless the appellant applies to the Tribunal in writing within six months¹⁵ of paying the fee¹⁶.

¹ As to the Secretary of State see PARA 2.

² As to rights of appeal see PARA 434; and as to the time for instituting an appeal see PARA 436.

³ Gambling Act 2005 s 147(1). Sums received by way of fees under s 147 must be paid into the Consolidated Fund: Sch 8 para 8. As to the Gambling Appeals Tribunal see PARA 6.

⁴ Gambling Act 2005 s 147(2)(a).

⁵ Gambling Act 2005 s 147(2)(b).

⁶ As to the meaning of 'operating licence' see PARA 349 note 2.

⁷ As to the meaning of 'personal licence' see PARA 400.

8 For the prescribed fees see the Gambling Appeals Tribunal Fees Regulations 2006, SI 2006/3287, reg 2, Schedule.

9 Gambling Appeals Tribunal Fees Regulations 2006, SI 2006/3287, reg 3(1). The following are qualifying benefits for this purpose: (1) income support under the Social Security Contributions and Benefits Act 1992; (2) working tax credit under the Tax Credits Act 2002, provided that (a) child tax credit is being paid to the appellant, or otherwise following a claim made jointly by the appellant and another person as a couple under s 3(3); or (b) there is a disability element or severe disability element (or both) to the tax credit received by the appellant, and the gross annual income taken into account for the calculation of the working tax credit is £15,460 or less; (3) income-based jobseeker's allowance under the Jobseekers Act 1995; (4) guarantee credit under the State Pension Credit Act 2002; (5) income-related employment and support allowance payable under the Welfare Reform Act 2007 Pt 1: Gambling Appeals Tribunal Fees Regulations 2006, SI 2006/3287, reg 3(2) (amended by SI 2008/1879).

10 Gambling Appeals Tribunal Fees Regulations 2006, SI 2006/3287, reg 4.

11 *Ie* under the Gambling Appeals Tribunal Fees Regulations 2006, SI 2006/3287, reg 3: see the text and note 9.

12 *Ie* under the Gambling Appeals Tribunal Fees Regulations 2006, SI 2006/3287, reg 4: see the text and note 10.

13 See note 12.

14 Gambling Appeals Tribunal Fees Regulations 2006, SI 2006/3287, reg 5(1).

15 The Tribunal may extend the period of six months referred to in the text if it considers that there is good reason for an application being made after the end of the period of six months: Gambling Appeals Tribunal Fees Regulations 2006, SI 2006/3287, reg 5(3).

16 Gambling Appeals Tribunal Fees Regulations 2006, SI 2006/3287, reg 5(2).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(C) PRELIMINARY MATTERS

440. Appeal notice.

An appeal¹ must be made by way of a written notice² ('the appeal notice') signed³, dated and filed⁴ by the appellant⁵. The appellant must send to the Gambling Appeals Tribunal⁶ the appropriate fee⁷ with the appeal notice unless the appeal notice includes an application for reduction, waiver or exemption from that fee⁸. Where the appellant fails to send the appropriate fee in accordance with that requirement, the appeal notice will not be treated as being received by the Tribunal and will be returned to the appellant⁹. Where an application for reduction, waiver or exemption of the fee has been included with the appeal notice in accordance with that requirement, no further action is to be taken in relation to the appeal notice until that application has been determined and the appellant has been notified of the appropriate fee, if any, to be paid¹⁰.

The appeal notice must state:

- 1333 (1) the name and address¹¹ of the appellant;
- 1334 (2) the name and address of the appellant's representative, if any¹²;
- 1335 (3) the address for service;
- 1336 (4) that the notice is an appeal notice; and
- 1337 (5) the grounds of appeal that the appellant wishes the Tribunal to consider¹³.

A copy of the Gambling Commission's determination¹⁴ must be filed with the appeal notice¹⁵.

The appellant:

- 1338 (a) may include an application for directions with the appeal notice¹⁶;
- 1339 (b) must, where the time limit for bringing an appeal¹⁷ has expired, include with the appeal notice an application for a direction to extend the time limit for making an appeal, which must include a statement of the reasons for the extension¹⁸.

Where an application is made under head (a) or head (b) above, the Tribunal must refer the application for determination and must take no further action in relation to the appeal notice until such an application has been determined¹⁹.

Upon receiving an appeal notice the Tribunal must²⁰:

- 1340 (i) enter particulars of the appeal in the register²¹;
- 1341 (ii) inform the parties²² in writing of the date when the Tribunal received the appeal notice and of the Tribunal's decision on any application made for directions, including the particulars of any direction given;
- 1342 (iii) provide the Commission with a copy of the appeal notice, any application for directions²³ and any other document filed with the appeal notice²⁴.

When sending the parties the information and documents in accordance with heads (i) to (iii) above, the Tribunal must specify the date on which they are being sent²⁵.

1 'Appeal' means an appeal to the Gambling Appeals Tribunal under the Gambling Act 2005 s 141 (see PARA 434) or s 337(1) (see PARA 328): Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 2(2). The 2006 Rules apply to all appeals to the Tribunal: r 3.

2 The Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 40 applies to any notice sent under the 2006 Rules, and in r 40 'notice' includes any notice or other information required or authorised by those Rules to be sent to any person and 'recipient' means a person to or on whom any notice is required or authorised to be sent for the purposes of those Rules: r 40(1). A notice may be sent (1) by a postal service which seeks to deliver documents or other things by post no later than the next working day in all or in the majority of cases; (2) by fax; (3) by email to an email address; or (4) by personal delivery: r 40(2). A notice must be sent: (a) in the case of a notice directed to the Tribunal, to the Tribunal's office; (b) in the case of a notice directed to the appellant, to his representative or, where there is no representative, to the appellant, at the appropriate address notified to the Tribunal in accordance with r 4(3)(c) (see head (c) in the text); (c) in the case of a notice directed to the Gambling Commission, to the Commission's head office; or (d) otherwise, to the recipient's registered office or last known address: r 40(3). Subject to r 40(5), (6), a notice that is sent is deemed, unless the contrary is proved, to have been received, where it was sent by post, on the second day after it was sent, and in any other case, on the day it was sent: r 40(4). Where a notice is sent by post to the Tribunal, it is deemed to have been received on the day it was actually received by the Tribunal: r 40(5). No notice is deemed to have been received if it is not received in legible form or in a form from which it can readily be produced in a legible form: r 40(6). As to the Gambling Commission see PARA 4.

Where (i) a recipient cannot be found; (ii) a recipient has died and has no known personal representative; (iii) a recipient has no address for service in the United Kingdom; or (iv) for any other reason service on a recipient cannot be readily effected, the Tribunal may dispense with service on the recipient or may make an order for alternative service on such other person or in such other form (whether by advertisement in a newspaper or otherwise) as the Tribunal may think fit: r 40(7), (8). As to the meaning of 'United Kingdom' see PARA 16 note 8.

3 Any requirement in the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, for a document to be signed by a party or his representative is satisfied, in the case of a document which is sent electronically in accordance with those Rules, by the person who is required to sign the document typing his name or producing it by computer or other mechanical means: r 42. 'Document' includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form or in a form from which it can readily be produced in a legible form: r 2(2).

4 'File' means send to the Gambling Appeals Tribunal: Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 2(2).

5 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 4(1). 'Appellant' means a person who brings an appeal before the Tribunal: r 2(2). Unless the context requires otherwise, anything permitted or required by the 2006 Rules to be done by a party may be done by any representative of that party: r 2(3). As to the meaning of 'party' see note 22.

6 As to the Gambling Appeals Tribunal see PARA 6.

7 'Fee' means fee prescribed by regulations made under the Gambling Act 2005 s 147 (see PARA 439): Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 2(2).

8 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 4(2).

Where the appellant pays any fee by cheque and that cheque is subsequently dishonoured, the Tribunal must serve a notice on the appellant requiring payment of the fee specifying the date by which the fee must be paid: r 36(1), (2). If the fee is not paid by the date specified in the notice, the appeal will automatically be struck out without further order of the Tribunal and the appellant will be liable for the costs that any other party has incurred unless the Tribunal orders otherwise: r 36(3).

9 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 4(4).

10 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 4(12).

11 For this purpose, 'address' in respect of a corporation means the address of the registered or principal office: Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 4(8).

12 Where a representative, other than a legal representative, is named under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 4(3)(b) (see head (b) in the text) and the appeal notice is signed by the representative on behalf of the appellant, the appellant must file with the appeal notice a written statement, signed by the appellant, that the representative is authorised so to act: r 4(5). Where a representative is named under r 4(3)(b) the appellant must notify the Tribunal in writing immediately of any change to the person so named: r 4(6). Where a representative is appointed by the appellant after having filed the appeal notice under r 4(1), the appellant must notify the Tribunal immediately of that fact and of the name and address of the representative: r 4(7).

'Legal representative' means an authorised advocate or authorised litigator, as defined by the Courts and Legal Services Act 1990 s 119(1), or any person who according to the law of Scotland, has rights to conduct litigation on behalf of members of the public or rights of audience: Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 2(2). Note that the relevant definitions in the Courts and Legal Services Act 1990 s 119(1) are prospectively repealed by the Legal Services Act 2007 Sch 21 paras 83, 97(1), (2), Sch 23, as from a day to be appointed under s 211(2); at the date at which this volume states the law, no such day had been appointed and those repeals were not in force.

13 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 4(3).

14 'Determination' means the Commission's decision or action, which is the subject of an appeal, or, where appropriate, the written notification of such decision: Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 2(2).

15 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 4(9).

16 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 4(10). 'Direction' includes any direction, summons or order given or made by the Tribunal: r 2(2). As to the directions which may be given see PARA 442.

17 Ie under the Gambling Act 2005 s 142(1): see PARA 436.

18 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 4(11).

19 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 4(13).

20 Ie subject to the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 4(12), (13) (see the text and notes 10, 19) and to any directions given by the Tribunal: see r 4(14).

21 'The register' means the register maintained in accordance with the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 33: r 2(2). The Tribunal must maintain a register containing particulars of appeals to, and decisions of, the Tribunal, including the final determination: r 33(1). The register must be reasonably accessible to any person without charge: r 33(2) (amended by SI 2007/577). 'Final determination' means the determination of the Tribunal in relation to the appeal before it: Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 2(2). A document purporting to be certified by the Tribunal to be a true copy of any entry of a decision in the register is, unless proved to the contrary, sufficient evidence of the entry and of the matters referred to in it: r 39(2).

22 'Party' means the appellant or the Commission and 'other party' is to be construed accordingly: Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 2(2).

23 Ie any application made under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 4(10): see the text and note 16.

24 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 4(14).

25 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 4(15).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue)
PARA 196A.

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441. Gambling Commission's statement of case and appellant's reply.

The Gambling Commission¹ must file² a written statement ('a statement of case') in support of its determination³ so that it is received by the Gambling Appeals Tribunal⁴ no later than 28 days⁵ after the day on which the Tribunal sends the Commission the information and any documents⁶ on receipt of the appeal notice⁷. The statement of case must:

- 1343 (1) state whether or not the Commission intends to oppose the appeal⁸;
- 1344 (2) specify the statutory provisions under which the Commission's determination was made;
- 1345 (3) specify the reasons for the Commission's determination unless provided in accordance with head (b) below;
- 1346 (4) set out all the matters and facts relied upon to support the Commission's determination;
- 1347 (5) specify the name of a contact person at the Commission or the name and address of a representative; and
- 1348 (6) be signed by any person authorised to sign it on behalf of the Commission⁹.

It must be accompanied by:

- 1349 (a) a list of and a copy of the documents relied upon in support of the Commission's determination and any further material that in the opinion of the Commission might undermine its determination or adversely affect its case or support the appellant's¹⁰ case;
- 1350 (b) a copy of the Commission's determination if not filed¹¹ by the appellant¹².

The Commission may include an application for directions¹³ with the statement of case¹⁴.

The Tribunal must send to the appellant a copy of the statement of case and a copy of the list and the information referred to in head (a) above¹⁵.

If at any time the Commission amends the statement of case it must file an application for a direction¹⁶ with the amended statement of case¹⁷. If that application is granted by the Tribunal, the Tribunal must send a copy of the amended statement of case to the appellant¹⁸.

The appellant must file a written reply no later than 28 days after the date on which the appellant received a copy of the statement of case or, if the Commission amends its statement of case, the date on which the appellant received a copy of the amended statement of case¹⁹. The reply must:

- 1351 (i) state the grounds the appellant relies upon in his notice of appeal²⁰;
- 1352 (ii) identify all matters contained in the statement of case which are disputed by the appellant; and
- 1353 (iii) state the appellant's reasons for disputing the matters identified in head (ii) above²¹.

It must be accompanied by a list of and a copy of all the documents on which the appellant relies in support of his case²².

Upon receipt of the appellant's reply, the Tribunal must send to the Commission a copy of the reply and of the list and documents referred to above²³.

If at any time the appellant wishes to amend the reply provided in accordance with these provisions he must file an application for a direction²⁴ with the amended reply²⁵; and if that application is granted by the Tribunal, the Tribunal must send a copy of the amended reply to the Commission²⁶.

Following the filing of the appellant's reply, if there is any further material which might be reasonably expected to assist the appellant's case as disclosed by the appellant's reply and which is not mentioned in the list provided in accordance with head (a) above, the Commission must file a list and a copy of such further material²⁷. Any list and material so required to be filed must be filed so that it is received no later than 14 days²⁸ after the day on which the Commission received the appellant's reply²⁹; and the Tribunal must send to the appellant a copy of any list and material so filed by the Commission³⁰.

A list provided in accordance with any of the above provisions³¹ need not include any document in respect of which an application has been or is being made under the following provisions³². A party³³ may apply to the Tribunal, without giving notice to the other party, for a direction authorising that party not to include a document in the required list³⁴ on the ground that:

- 1354 (A) disclosure would not be in the public interest;
- 1355 (B) the document contains commercially sensitive information;
- 1356 (C) disclosure could not be compelled in the trial of a claim in a court of law in that part of Great Britain³⁵ where the appeal is to be decided; or
- 1357 (D) disclosure would not be fair, having regard to the likely significance of the document to the appellant in relation to the appeal before the Tribunal, and the potential prejudice to the legitimate interests of a person other than the appellant, which would be caused by disclosure of the document³⁶.

For the purpose of deciding an application by a party under these provisions, the Tribunal may require that the document be produced³⁷ to the Tribunal together with a statement of the reasons why it should not be included in the list, and may invite the other party to make representations³⁸. If the Tribunal refuses such an application, it must direct that party to revise the list so as to include the document and to file a copy of that list as revised and the relevant document³⁹. The Tribunal must send a copy of the list and document so filed to the other party⁴⁰.

1 As to the Gambling Commission see PARA 4.

2 As to the meaning of 'file' see PARA 440 note 4.

3 As to the meaning of 'determination' see PARA 440 note 14.

4 As to the Gambling Appeals Tribunal see PARA 6.

5 Where a period of time for doing any act is specified in days by the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, or by a direction of the Tribunal, that period is to be calculated (1) excluding the day on which the period begins; and (2) where the period is ten days or less, as working days: r 41(1) (amended by SI 2007/577). Where the time prescribed for doing any act expires on a day which is not a working day, the act is done in time if done on the next working day: Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 41(2) (substituted by SI 2007/577). 'Working day' means any day except for Saturday, Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971: Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 2(2) (definition added by SI 2007/577).

- 6 le under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 4(14): see PARA 440. As to the meaning of 'document' see PARA 440 note 3.
- 7 See the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 5(1).
- 8 As to the meaning of 'appeal' see PARA 440 note 1.
- 9 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 5(2) (amended by SI 2007/577). As to the signature of documents see PARA 440 note 3.
- 10 As to the meaning of 'appellant' see PARA 440 note 5.
- 11 le under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 4(9): see PARA 440.
- 12 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 5(3). Where the Tribunal considers that it would be unreasonable to provide any document contained in a list filed under r 5(3)(a) (see head (a) in the text), r 6(3) (see the text and note 22), r 7(1) (see the text and note 28) or r 8(4)(b) (see the text and note 39) it may make provision for the inspection of that document instead: r 9.
- 13 As to the meaning of 'direction' see PARA 440 note 16.
- 14 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 5(5).
- 15 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 5(4).
- 16 le under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 11(f): see PARA 442.
- 17 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 5(6).
- 18 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 5(7).
- 19 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 6(1).
- 20 'Appeal notice' means a notice filed under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 4 (see PARA 440): r 2(2).
- 21 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 6(2).
- 22 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 6(3). See also r 9, cited in note 12.
- 23 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 6(4).
- 24 See note 16.
- 25 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 6(5).
- 26 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 6(6).
- 27 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 7(1). See also r 9, cited in note 12.
- 28 As to the calculation of this period see note 5.
- 29 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 7(2).
- 30 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 7(3).
- 31 le a list provided in accordance with the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 5(3)(a) (see head (a) in the text), r 6(3) (see the text and note 22) or r 7(1) (see the text and note 27).
- 32 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 8(1).
- 33 As to the meaning of 'party' see PARA 440 note 22.
- 34 le the list required by the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 5(3)(a) (see head (a) in the text), r 6(3) (see the text and note 23) or r 7(1) (see the text and note 28).
- 35 As to the meaning of 'Great Britain' see PARA 16 note 8.

36 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 8(2).

37 As to the production of documents see PARA 440 note 3.

38 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 8(3). 'Representations' means written representations or (with the consent of the Tribunal, or at its request) oral representations: r 2(2).

39 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 8(4). See also r 9, cited in note 12.

40 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 8(5).

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(iii) Appeals with regard to Operating Licences and Personal Licences/C. PROCEDURE AND FEES/(C) Preliminary Matters/442. Directions by the Gambling Appeals Tribunal.

442. Directions by the Gambling Appeals Tribunal.

The Gambling Appeals Tribunal¹ may at any time give directions² to enable the parties³ to prepare for the hearing of the appeal⁴, assist the Tribunal to determine the issues and ensure the just, expeditious and economical determination of the appeal generally⁵. The Tribunal may give directions on the application of any party or of all the parties or on its own motion⁶; and where it gives a direction of its own initiative, the Tribunal may, but need not, give prior notice⁷ to the parties of its intention to do so⁸.

Any application by a party for directions must include the reasons for making that application⁹. An application for directions must be filed¹⁰ unless it is made during the course of an oral hearing¹¹; and unless it is accompanied by the written consent of all the parties or an application without notice is permitted by the Tribunal, the Tribunal must send a copy of the application to the other party¹². Where the application for directions has been filed and a copy sent to the other party in accordance with that requirement, any objection to the directions applied for, together with the reasons for the objection, must be sent to the Tribunal within 14 days¹³ of the date on which the copy application was sent¹⁴. The Tribunal must send a copy of the objection and reasons to the party who applied for the directions and before notifying the parties of the decision that it is minded to make, the Tribunal must invite the parties to object to that decision¹⁵.

Directions may be given orally or in writing and, unless the Tribunal decides otherwise in any particular case, notice of any direction, or refusal to give a direction, must be given to the parties¹⁶. Directions containing a requirement may specify a time limit for complying with the requirement and must include a statement of the possible consequences of a party's failure to comply with the requirement¹⁷.

Directions given by the Tribunal may in particular:

- 1358 (1) permit the appellant to bring an appeal after the expiry of the statutory time limit¹⁸;
 - 1359 (2) fix the time and place of any hearing and alter any time and place so fixed¹⁹;
 - 1360 (3) provide for an oral hearing, upon such notice as the Tribunal may determine, in connection with any matter arising under the appeal;
 - 1361 (4) adjourn²⁰ any oral hearing;
 - 1362 (5) vary any time limit for anything to be done under the relevant rules²¹;
 - 1363 (6) permit or require any party to provide further information or supplementary statements²² or to amend a response document²³ or a supplementary statement²⁴;
 - 1364 (7) require any party to file any document²⁵;
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- 139. (a) that is in the custody or under the control of that party;
 - 140. (b) that the Tribunal considers is or may be relevant to the determination of the appeal and which is to be used only for the purposes of determining the appeal; and

141. (c) that has neither been exempted from disclosure²⁶ nor been made available²⁷,
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- 1365 and may also provide that any such document filed must be copied to the other party by the Tribunal, or require a party to make it available to the other party for inspection and copying²⁸;
- 1366 (8) require any party to provide a statement of relevant issues and facts, and to identify those which are, and are not, agreed by the other party;
- 1367 (9) require any party to file documents for any hearing under the relevant rules²⁹ unless the parties reach an agreement in relation to the documents to be filed³⁰;
- 1368 (10) require any party to file a list of the witnesses that the party wishes to call to give evidence at the hearing of the appeal and statements of the evidence which those witnesses intend to give, if called³¹;
- 1369 (11) make provision for any expert witness to be called, including the number of such witnesses, and the evidence to be given, or any documents to be provided by them;
- 1370 (12) provide for the manner in which any evidence may be given;
- 1371 (13) provide for languages in addition to English, including provision as to the venue of any hearing under the relevant rules³² so as to ensure the availability of simultaneous interpretation facilities, and for the translation of any document;
- 1372 (14) require that the register³³ must include no or limited particulars about the appeal³⁴;
- 1373 (15) where two or more appeal notices³⁵ have been filed in respect of the same matter, in respect of separate interests in the same matter, or which involve the same issues, provide that the appeals or any particular issue or matter raised in the appeals be consolidated or heard together³⁶.

A person to whom a direction is given under the relevant rules³⁷ may apply to the Tribunal showing good cause why it should be varied or set aside³⁸. The Tribunal must not grant such an application without first giving the person who applied for the direction an opportunity to make representations³⁹.

- 1 As to the Gambling Appeals Tribunal see PARA 6.
- 2 As to the meaning of 'direction' see PARA 440 note 16.
- 3 As to the meaning of 'party' see PARA 440 note 22.
- 4 As to the meaning of 'appeal' see PARA 440 note 1. As to oral hearings see PARAS 450-451.
- 5 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 10(1).
- 6 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 10(2).
- 7 As to the method of giving notice see PARA 440 note 2.
- 8 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 10(3).
- 9 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 10(4).
- 10 As to the meaning of 'file' see PARA 440 note 4.
- 11 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 10(5).
- 12 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 10(6).
- 13 As to the calculation of this period see PARA 441 note 5.

14 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 10(7).

15 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 10(8).

16 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 10(9).

17 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 10(10).

18 If the time limit under the Gambling Act 2005 s 142(1) (see PARA 436): see the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 11(1)(a). Where the appellant has made an application to the Tribunal for a direction to allow an appeal to be brought after the time limit for doing so has expired, the Tribunal must, subject to r 12(2), consider whether (1) the determination was such as to notify the appellant properly and effectively of the Gambling Commission's decision or action; and (2) the existence of the right to make the appeal and the time limit had been notified to the appellant: r 12(1). The Tribunal must not allow the late appeal to proceed unless it considers that it is in the interests of justice to do so: r 12(2). As to the meaning of 'determination' see PARA 440 note 14; and as to the Gambling Commission see PARA 4.

19 Before making a direction under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 11(b) (see head (2) in the text) to fix the time and place of a hearing, the Tribunal must consider (1) whether the appeal should be heard in England or Wales or in Scotland, depending on which jurisdiction is most closely connected to the matters that are the subject of the appeal; (2) whether the appeal should be dealt with as a matter of urgency; (3) the convenience of the appellant in attending or being able to attend a hearing which is to be heard as a matter of urgency at short notice; and (4) the convenience of any person that a party is minded to call as a witness, being able to attend a hearing which is to be heard as a matter of urgency at short notice: r 13.

20 If subject to the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 24: see PARA 451.

21 If for anything to be done under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293: see PARAS 440-441, 443 et seq. The Tribunal must not make a direction under r 11(e) (see head (5) in the text) to vary any time limit imposed by those Rules or by a previous direction of the Tribunal, whether on the application of any party or of its own initiative, unless it is satisfied that it is in the interests of justice to do so: r 15(1). Before making a direction to vary any time limit, the Tribunal must consider whether the appeal should be dealt with as a matter of urgency and, without prejudice to r 15(3), must take into consideration any objections: r 15(2). The Tribunal may direct that a time limit be extended by 14 days or less without first considering whether any party objects to the direction, but any such objection must be taken into account on any subsequent application to extend a time limit: r 15(3). The Tribunal may direct that a time limit be extended whether or not that time limit has already expired: r 15(4). A time limit which has previously been extended may from time to time be further extended by directions of the Tribunal, whether or not that or any subsequent such time limit has already expired: r 15(5). Where a party files a response document or list later than any time limit imposed or extended under the 2006 Rules but without applying for a direction under r 11(e) extending the time limit, that party must be treated as applying for such a direction: r 15(6). If a response document or list is not filed in accordance with the time limit imposed by or extended under the 2006 Rules, the Tribunal may of its own initiative direct that the document or list be filed by a specified date: r 15(7). As to the meaning of 'response document' see note 23.

22 'Supplementary statement' means a statement that is supplementary to a response document and filed in accordance with a direction given under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 11(f) (see head (6) in the text): r 2(2).

23 'Response document' means (1) in relation to the Commission, its statement of case filed under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 5 (see PARA 441); and (2) in relation to the appellant, his reply filed under r 6 (see PARA 441): r 2(2).

24 If the Tribunal gives a direction under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 11(f) (see head (6) in the text) to permit or require a party to provide further information or a supplementary statement or to amend a response document or supplementary statement, the direction may require that party to file any such information, statement or amendment and provide that the Tribunal will send a copy to the other party: r 16(1).

25 As to the meaning of 'document' see PARA 440 note 3.

26 If by direction given pursuant to the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 8(2): see PARA 441.

27 If made available pursuant to the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, rr 5(3)(a), 6(3), 7(1) or 8(4)(b): see PARA 441.

28 The Tribunal must not give a direction under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 11(g) (see head (7) in the text) or r 11(i) (see head (9) in the text) if it considers that any of the grounds in r 8(2) (see PARA 441) apply in relation to the documents which would be the subject of the direction, and for the purpose of satisfying itself in respect of any such document, the Tribunal may (1) require that the document be produced to the Tribunal; (2) conduct any hearing in the absence of any party; and (3) invite any party to make representations: r 16(2). As to the production of documents see PARA 440 note 3.

29 le under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293: see PARAS 440-441, 443 et seq.

30 See note 28.

31 Each party must, not less than 14 days before the day fixed for the hearing of the appeal, file a written notice stating whether he intends to call witnesses and the names of those witnesses he intends to call, and the Tribunal must send a copy of the notice to the other party: Gambling Appeals Tribunal Rules 2006, SI 2006/329, r 14.

32 See note 29.

33 As to the meaning of 'the register' see PARA 440 note 21.

34 In the case of an application for a direction under the Gambling Appeals Tribunal Rules 2006, SI 2006/329, r 11(n) (see head (14) in the text) that the register should include no or limited particulars about the appeal, the Tribunal may give such a direction if it is satisfied that this is necessary, having regard to (1) the interests of public order, national security or the protection of the private lives of the parties; or (2) any unfairness to the appellant or prejudice to the interests of justice that might result from the register including particulars about the appeal: r 16(3).

35 As to the meaning of 'appeal notice' see PARA 441 note 20.

36 Gambling Appeals Tribunal Rules 2006, SI 2006/329, r 11(a)-(o).

37 See note 29.

38 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 10(11).

39 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 10(12). As to the meaning of 'representations' see PARA 441 note 38.

UPDATE

327-442 Enforceability of gambling contracts ... Directions by the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(iii) Appeals with regard to Operating Licences and Personal Licences/C. PROCEDURE AND FEES/(C) Preliminary Matters/443. Summoning of witnesses.

443. Summoning of witnesses.

Any party¹ may apply to the Gambling Appeals Tribunal² for a summons to require any person to:

- 1374 (1) attend, at such time and place as is specified in the summons, to give evidence as a witness;
- 1375 (2) file³, within the time specified in the summons, any document⁴ in his custody or under his control which the Tribunal considers it necessary to examine; or
- 1376 (3) both attend and file in accordance with heads (1) and (2) above⁵.

Any summons so issued by the Tribunal must state the name and address of the person to be summoned and be signed on behalf of the Tribunal⁶, and it is the responsibility of the party who made the application under the above provisions to serve the summons⁷. No person may, however, be required under these provisions to file a document where the Tribunal is satisfied that a ground for non-disclosure⁸ applies in relation to the document and, for the purpose of satisfying itself in respect of any such document, the Tribunal may:

- 1377 (a) require that the document be produced⁹ to the Tribunal;
- 1378 (b) conduct any hearing in the absence of any party; and
- 1379 (c) invite any party to make representations¹⁰.

The person to whom a summons is addressed must be given not less than seven days' notice¹¹ of his obligations under heads (1) to (3) above¹²; and every summons must contain a statement warning of the effect of failing to comply with the summons¹³. If a person, without reasonable excuse, fails to comply with a summons, he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale¹⁴. At the time of service of a summons a person must be offered or paid a sum to cover his expenses in travelling to and from the Tribunal by the party serving the summons¹⁵.

The Tribunal may, upon the application of the person to whom the summons is addressed, direct that the summons be set aside or varied¹⁶.

1 As to the meaning of 'party' see PARA 440 note 22.

2 As to the Gambling Appeals Tribunal see PARA 6.

3 As to the meaning of 'file' see PARA 440 note 4.

4 As to the meaning of 'document' see PARA 440 note 3.

5 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 17(1).

6 As to the signature of documents see PARA 440 note 3. Any document purporting to be a document duly executed or issued by the Tribunal is, unless proved to the contrary, deemed to be a document so executed or issued: r 39(1).

- 7 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 17(2).
- 8 le a ground in the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 8(2): see PARA 441.
- 9 As to the production of documents see PARA 440 note 3.
- 10 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 17(3). As to the meaning of 'representations' see PARA 441 note 38.
- 11 As to the calculation of this period see PARA 441 note 5.
- 12 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 17(4).
- 13 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 17(5).
- 14 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 17(7). As to the standard scale see PARA 17 note 21.
- 15 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 17(8) (amended by SI 2007/577).
- 16 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 17(6).

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444. Preliminary hearing.

The Gambling Appeals Tribunal¹ may direct that any preliminary question of fact or law which appears to be in issue in relation to the appeal² be determined at a preliminary hearing³. If, in the opinion of the Tribunal, the determination of that question substantially disposes of the appeal, the Tribunal may treat the preliminary hearing as the hearing of the appeal and may make such order by way of disposing of the appeal as it thinks fit⁴. If the parties⁵ so agree in writing, the Tribunal may determine that question without an oral hearing, but, in any such case, the Tribunal may not at the same time dispose of the appeal unless the parties have agreed in writing that it may do so⁶.

- 1 As to the Gambling Appeals Tribunal see PARA 6.
- 2 As to the meaning of 'appeal' see PARA 440 note 1.
- 3 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 18(1).
- 4 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 18(2).
- 5 As to the meaning of 'party' see PARA 440 note 22.
- 6 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 18(3).

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(4) OPERATING LICENCES AND PERSONAL LICENCES/(iii) Appeals with regard to Operating Licences and Personal Licences/C. PROCEDURE AND FEES/(C) Preliminary Matters/445. Withdrawal of appeal and unopposed appeals.

445. Withdrawal of appeal and unopposed appeals.

The appellant¹ may withdraw the appeal²:

- 1380 (1) at any time before the hearing of the appeal, without permission, by filing³ a notice in writing to that effect; or
- 1381 (2) at the hearing of the appeal, with the Tribunal's permission⁴.

The Tribunal must dismiss any appeal that is so withdrawn⁵.

The Gambling Commission⁶ may state that it does not oppose the appeal or that it is withdrawing its opposition to it:

- 1382 (a) at any time before the hearing of the appeal, without permission, by filing a notice to that effect; or
- 1383 (b) at the hearing of the appeal, with the Tribunal's permission,

and the Tribunal must allow the appeal⁷.

In any case where the Commission does not file a statement of case⁸ within the time limit imposed⁹, or any such time limit as varied by a direction¹⁰, or the appellant does not file a reply¹¹ within any time limit imposed¹², or any such time limit as varied by a direction¹³, the Tribunal may¹⁴ determine the appeal without an oral hearing¹⁵; but it must not dismiss an appeal without notifying the appellant that it is minded to do so and giving him an opportunity to make representations¹⁶.

1 As to the meaning of 'appellant' see PARA 440 note 5.

2 As to the meaning of 'appeal' see PARA 440 note 1.

3 As to the meaning of 'file' see PARA 440 note 4.

4 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 19(1)(a), (b).

5 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 19(1).

6 As to the Gambling Commission see PARA 4.

7 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 19(2).

8 As to the meaning of 'statement of case' see PARA 441.

9 Ie imposed by the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 5(1): see PARA 441.

10 Ie a direction under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 11(e): see PARA 442 at head (5).

11 'Reply' means a reply filed by the appellant under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 6 (see PARA 441): r 2(2).

12 le imposed by the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 6(1): see PARA 441.

13 See note 10.

14 le subject to its power to give a direction pursuant to the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 15(7): see PARA 442.

15 le in accordance with the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 21: see PARA 450.

16 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 19(3). As to the meaning of 'representations' see PARA 441 note 38.

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446. Prehearing review.

The following provisions apply if the Gambling Appeals Tribunal¹ directs that it is appropriate to hold a prehearing review².

The prehearing review may be held at any time before the hearing of the appeal³. The Tribunal must give the parties⁴ not less than 14 days' notice⁵ of the time and place of the prehearing review⁶.

At the prehearing review the Tribunal must give all directions⁷ appearing necessary or desirable for securing the just, expeditious and economical conduct of the appeal and must endeavour to secure that the parties make all admissions and agreements as they ought reasonably to make in relation to the proceedings⁸.

1 As to the Gambling Appeals Tribunal see PARA 6.

2 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 20(1).

3 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 20(2). As to the meaning of 'appeal' see PARA 440 note 1.

4 As to the meaning of 'party' see PARA 440 note 22.

5 As to the calculation of this period see PARA 441 note 5; and as to the method of giving notice see PARA 440 note 2.

6 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 20(3).

7 As to the meaning of 'direction' see PARA 440 note 16.

8 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 20(4).

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447. Power to strike out.

Without limiting any other powers conferred on it by the Gambling Act 2005 or the relevant rules¹, the Gambling Appeals Tribunal² may, if it thinks fit, order any response document³, supplementary statement⁴ or written representation to be struck out at any stage of the proceedings on the ground that it:

- 1384 (1) discloses no reasonable grounds for bringing or defending the appeal⁵;
- 1385 (2) is an abuse of process; or
- 1386 (3) is otherwise likely to obstruct the just disposal of proceedings⁶.

The Tribunal may also order any appeal to be struck out for inordinate delay⁷.

Before making any such order, the Tribunal must provide an opportunity for the party⁸ against whom it is proposed that the order should be made to make representations⁹ against the making of the order¹⁰.

1 le by the Gambling Appeals Tribunal Rules 2006, SI 2006/3293: see PARAS 440 et seq, 448 et seq.

2 As to the Gambling Appeals Tribunal see PARA 6.

3 As to the meaning of 'response document' see PARA 442 note 23.

4 As to the meaning of 'supplementary statement' see PARA 442 note 22.

5 As to the meaning of 'appeal' see PARA 440 note 1.

6 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 34(2)(a).

7 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 34(2)(b).

8 As to the meaning of 'party' see PARA 440 note 22.

9 As to the meaning of 'representations' see PARA 441 note 38.

10 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 34(3).

UPDATE

447-448 Power to strike out ... Powers of the Gambling Appeals Tribunal on an appeal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(D) HEARINGS AND DETERMINATION

448. Powers of the Gambling Appeals Tribunal on an appeal.

On an appeal¹ against a decision or action taken by the Gambling Commission², the Gambling Appeals Tribunal³ may:

- 1387 (1) affirm the Commission's decision or action;
- 1388 (2) quash the Commission's decision or action in whole or in part;
- 1389 (3) substitute for all or part of the Commission's decision or action another decision or action of a kind that the Commission could have taken;
- 1390 (4) add to the Commission's decision or action a decision or action of a kind that the Commission could have taken;
- 1391 (5) remit a matter to the Commission either generally, or for determination in accordance with a finding made or direction given by the Tribunal⁴;
- 1392 (6) reinstate a lapsed or revoked licence⁵.

In determining an appeal instituted out of time⁶ or following a direction by the Commission that a decision or action is not to be stayed pending appeal⁷, the Tribunal may, in addition to the matters specified in heads (1) to (6) above, make any order that it thinks appropriate⁸.

In determining an appeal the Tribunal must have regard to any relevant provision of a code of practice issued⁹ by the Commission¹⁰; and it may take account of evidence which was not available to the Commission¹¹.

1 le an appeal under the Gambling Act 2005 s 141: see PARA 434.

2 As to the Gambling Commission see PARA 4.

3 As to the Gambling Appeals Tribunal see PARA 6.

4 The Gambling Act 2005 s 141 (rights of appeal: see PARA 434) applies to a decision or action of the Commission following remittal under ss 144(1)(e) (see head (5) in the text): s 144(5).

5 Gambling Act 2005 s 144(1).

6 le under the Gambling Act 2005 s 142(2): see PARA 436.

7 le a direction under the Gambling Act 2005 s 145(2): see PARA 437.

8 Gambling Act 2005 s 144(2).

9 le issued under the Gambling Act 2005 s 24: see PARA 337.

10 Gambling Act 2005 s 144(3).

11 Gambling Act 2005 s 144(4).

UPDATE

447-448 Power to strike out ... Powers of the Gambling Appeals Tribunal on an appeal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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449. Determination without oral hearing.

The Gambling Appeals Tribunal¹ may determine an appeal², or any particular issue, without an oral hearing if the parties³ agree in writing, if the issue concerns an application for directions⁴, or if⁵ a statement of case⁶ or a reply⁷ has not been filed⁸. Where an appeal or an issue is determined in accordance with these provisions, the Tribunal must consider whether there are circumstances making it undesirable to publish the whole or part of its decision⁹. Before reaching a decision as to publication, the Tribunal must invite the parties to make representations¹⁰ on the matter¹¹. If the Tribunal decides that a restriction on publication is desirable the Tribunal may take any steps, including any one or more of the steps specified below¹², namely anonymising the decision, editing the text of the decision and declining to publish the whole or part of the decision¹³. Any step so taken must be taken with a view to ensuring the minimum restriction on publication that is consistent with the need for the restriction¹⁴.

- 1 As to the Gambling Appeals Tribunal see PARA 6.
- 2 As to the meaning of 'appeal' see PARA 440 note 1.
- 3 As to the meaning of 'party' see PARA 440 note 22.
- 4 As to the meaning of 'direction' see PARA 440 note 16.
- 5 If the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 19(3) applies: see PARA 445.
- 6 As to the meaning of 'statement of case' see PARA 441.
- 7 As to the meaning of 'reply' see PARA 445 note 11.
- 8 See the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 21(1).
- 9 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 21(2).
- 10 As to the meaning of 'representations' see PARA 441 note 38.
- 11 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 21(3).
- 12 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 21(4).
- 13 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 21(6).
- 14 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 21(5).

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450. Public hearings and directions for private hearings.

Subject to the following provisions, all hearings¹ must be in public². The Gambling Appeals Tribunal³ may, however, direct that all or part of a hearing must be in private:

- 1393 (1) upon the application of all the parties⁴; or
- 1394 (2) upon the application of any party, if the Tribunal is satisfied that a hearing in private is necessary, having regard to the interests of public order, national security or the protection of the private lives of the parties, or to any unfairness to the appellant⁵ that might result from a hearing in public, if the Tribunal is satisfied that a hearing in private would not prejudice the interests of justice⁶.

Before determining an application under head (2) above the Tribunal must give the other party an opportunity to make representations⁷.

Before giving a direction⁸ under the above provisions that all of a hearing should be in private, the Tribunal must consider whether only part of the hearing should be in private⁹.

The Tribunal may direct that any proceedings are to be held in private and may direct that any particular individual, except for a member of the Administrative Justice and Tribunals Council¹⁰, is to be excluded from those proceedings¹¹. The Tribunal may permit any individual to attend a hearing that is held in private¹².

The Tribunal may exclude from the whole or part of a hearing any person whose conduct, in the opinion of the Tribunal, has disrupted or is likely to disrupt the hearing¹³.

Subject to any direction to the contrary¹⁴, the Tribunal must provide for the public inspection at the Tribunal's offices of a daily list of all hearings that are to be held, together with information about the time and place fixed for the hearings¹⁵. Where, however, all or part of a hearing is held or is to be held in private, the Tribunal may direct that information about the whole or part of the proceedings before the Tribunal, including information that might help to identify any person, must not be made public¹⁶. Such a direction may provide for the information, if any, that is not to be entered in the register¹⁷ or that is to be removed from it¹⁸.

1 For these purposes, 'hearing' means any hearing under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, but does not include (1) any determination under 21(1) (see PARA 450); or (2) the hearing of any application made to the Tribunal without notice to the other party: r 22(1).

2 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 22(2).

3 As to the Gambling Appeals Tribunal see PARA 6.

4 As to the meaning of 'party' see PARA 440 note 22.

5 As to the meaning of 'appellant' see PARA 440 note 5.

6 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 22(3).

7 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 22(4). As to the meaning of 'representations' see PARA 441 note 38.

- 8 As to the meaning of 'direction' see PARA 440 note 16.
- 9 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 22(5).
- 10 As to the Administrative Justice and Tribunals Council (which replaces the Council on Tribunals) see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 56 et seq.
- 11 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 22(6) (amended by SI 2007/577; and by virtue of the Tribunals, Courts and Enforcement Act 2007 ss 44, 45).
- 12 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 22(7).
- 13 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 22(8).
- 14 In any direction under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 22(10): see the text and note 16.
- 15 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 22(9).
- 16 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 22(10).
- 17 As to the meaning of 'the register' see PARA 440 note 21.
- 18 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 22(11).

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451. Representation and procedure at hearing; adjournment of hearing.

The parties¹ may² appear at the hearing³, with assistance from any person if desired, and may be represented by any person, whether or not that person is legally qualified⁴. Where, however, the Gambling Appeals Tribunal⁵ is satisfied that there are sufficient reasons for doing so, it may refuse to permit a person to assist or represent a party at the hearing⁶.

Subject to the Gambling Act 2005 and to the relevant rules⁷, the Tribunal must conduct all hearings under those rules in such manner as it considers most suitable to the clarification of the issues before it and generally to the just, expeditious and economical determination of the proceedings⁸. Subject to any directions⁹ by the Tribunal, the parties may:

- 1395 (1) give evidence;
- 1396 (2) call witnesses and, with the consent of the Tribunal, bring expert evidence;
- 1397 (3) question any witnesses; and
- 1398 (4) address the Tribunal on the evidence, and generally on the subject matter of the appeal¹⁰.

The Tribunal may require the oral evidence of a witness to be given on oath or affirmation and for that purpose may administer the oath or affirmation¹¹. Evidence may be admitted by the Tribunal whether or not it would be admissible in a court of law and whether or not it was available to the Gambling Commission¹² when the Commission's determination¹³ was made¹⁴.

If a party fails to attend either in person or by representation at any hearing of which that party has been duly notified, the Tribunal may, if it is satisfied that there is no sufficient reason for the absence, either hear and determine the application or appeal in the party's absence or adjourn the hearing, and may give any directions it thinks fit¹⁵.

A party may rely on further written evidence which satisfies the conditions set out in heads (a) to (c) below unless the Tribunal, after considering any representations¹⁶ from the other party, is of the opinion that it would be contrary to the interests of justice¹⁷. The conditions to be satisfied are that:

- 1399 (a) the evidence was not, and could not reasonably have been, available to that party before the expiry of the period for filing¹⁸ a statement of case¹⁹ (in the case of the Commission) or a reply²⁰ (in the case of the appellant)²¹;
- 1400 (b) a copy of the evidence was filed by the party and sent by the Tribunal to the other party, to arrive at least seven days²² before the hearing²³; and
- 1401 (c) the extent and form of the evidence is such that, in the opinion of the Tribunal, it is not likely to impede the efficient conduct of the hearing²⁴.

If those conditions are not satisfied, the Tribunal may nevertheless give a party permission to rely on further written evidence at the hearing if it is of the opinion that it is in the interests of justice to do so²⁵. If the evidence is not admitted the Tribunal must disregard it in determining the appeal²⁶.

Where a party applies for an adjournment of an appeal hearing, he must:

- 1402 (i) if practicable, notify all other parties of the application;
- 1403 (ii) show good reason why an adjournment is necessary; and
- 1404 (iii) produce evidence of any fact or matter relied upon in support of the application²⁷.

The Tribunal must not adjourn a hearing of an appeal on the application of a party, unless satisfied that the appeal cannot otherwise be justly determined²⁸; and it must not, in particular, adjourn a hearing on the application of a party in order to allow the party more time to produce evidence, unless satisfied that:

- 1405 (A) the evidence relates to a matter in dispute;
- 1406 (B) it would be unjust to determine the appeal without permitting the party a further opportunity to produce the evidence; and
- 1407 (C) where the party has failed to comply with directions for the production of the evidence, he has produced a satisfactory explanation for that failure²⁹.

Where the hearing of an appeal is adjourned, the Tribunal must fix a new hearing date which must not be more than 28 days³⁰ after the original hearing date, unless there are exceptional circumstances that mean the appeal cannot justly be heard within that time, and must not be later than is strictly required by the circumstances necessitating the adjournment³¹.

- 1 As to the meaning of 'party' see PARA 440 note 22.
- 2 le subject to the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 23(2): see the text and notes 5-6.
- 3 For these purposes, 'hearing' means any hearing under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293: r 23(3).
- 4 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 23(1).
- 5 As to the Gambling Appeals Tribunal see PARA 6.
- 6 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 23(2).
- 7 le the Gambling Appeals Tribunal Rules 2006, SI 2006/3293: see PARAS 440 et seq, 452 et seq.
- 8 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 25(1).
- 9 As to the meaning of 'direction' see PARA 440 note 16.
- 10 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 25(2). As to the meaning of 'appeal' see PARA 440 note 1.
- 11 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 25(3).
- 12 As to the Gambling Commission see PARA 4.
- 13 As to the meaning of 'determination' see PARA 440 note 14.
- 14 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 25(4).
- 15 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 25(5).
- 16 As to the meaning of 'representations' see PARA 441 note 38.
- 17 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 26(1).
- 18 As to the meaning of 'file' see PARA 440 note 4.
- 19 As to the meaning of 'statement of case' see PARA 441.

- 20 As to the meaning of 'reply' see PARA 445 note 11.
- 21 As to the meaning of 'appellant' see PARA 440 note 5.
- 22 As to the calculation of this period see PARA 441 note 5.
- 23 Before the hearing the Tribunal may refer to copies of evidence sent to the Tribunal under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 26(6)(2)(b) (see head (b) in the text) for the purpose of considering whether or not it satisfies the conditions in r 26(2)(a), (b) and (c) (see heads (a)-(c) in the text): r 26(4).
- 24 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 26(2) (amended by SI 2007/577).
- 25 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 26(3).
- 26 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 26(5).
- 27 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 24(1).
- 28 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 24(2).
- 29 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 24(3).
- 30 See note 22.
- 31 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 24(4).

UPDATE

451-453 Representation and procedure at hearing; adjournment of hearing ... Costs

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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452. Final determination of the Gambling Appeals Tribunal.

Subject to the following provision, the Gambling Appeals Tribunal¹ must make arrangements for public access to its final determination². Where, however, the whole or any part of any hearing under the relevant rules³ was held in private, the Tribunal must consider whether, having regard to the reason for the hearing or any part of it being in private and to the outcome of the hearing, it would be undesirable to publish the whole or part of its final determination⁴. Before reaching a decision about publication, the Tribunal must invite the parties⁵, and may invite any interested parties, to make representations⁶ on the matter⁷. If the Tribunal decides that a restriction on publication is desirable the Tribunal may take any steps, including any one or more of the steps specified below⁸, namely anonymising the decision, editing the text of the decision and declining to publish the whole or part of the decision⁹. Any step so taken must be taken with a view to ensuring the minimum restriction on publication that is consistent with the need for the restriction¹⁰.

The Tribunal must as soon as may be practicable:

- 1408 (1) whether there has been an oral hearing or not, send a notification of the final determination, including reasons for the decision, to each of the parties to the appeal¹¹; and
- 1409 (2) subject to any steps taken to restrict publication¹² or any direction¹³ given with regard to entry on the register¹⁴, enter the final determination in the register¹⁵.

The notification of the final determination which is sent to the parties under head (1) above must be accompanied by a notification of any relevant provision of the Gambling Act 2005 relating to appeals from the Tribunal¹⁶ and of the time within which and the place at which an application for permission to appeal¹⁷ may be made¹⁸.

- 1 As to the Gambling Appeals Tribunal see PARA 6.
- 2 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 27(1).
- 3 Ie under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293: see PARA 440 et seq.
- 4 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 27(2).
- 5 As to the meaning of 'party' see PARA 440 note 22.
- 6 As to the meaning of 'representations' see PARA 441 note 38.
- 7 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 27(6).
- 8 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 27(3).
- 9 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 27(5).
- 10 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 27(4).
- 11 As to the meaning of 'appeal' see PARA 440 note 1.

12 le any step taken under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 27(3) (see the text and note 8) or under r 21(4) (see PARA 449).

13 As to the meaning of 'direction' see PARA 440 note 16.

14 le any direction given under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 22(11): see PARA 450.

15 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 27(7). As to the meaning of 'the register' see PARA 440 note 21.

16 As to appeals from the Tribunal see the Gambling Act 2005 s 143; and PARA 457.

17 As to applications for permission to appeal see PARA 458.

18 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 27(8).

UPDATE

451-453 Representation and procedure at hearing; adjournment of hearing ... Costs

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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453. Costs.

The Gambling Appeals Tribunal¹ may make a costs order² against an appellant³ if it considers the bringing of the appeal⁴, or the appellant's conduct in relation to the appeal, to be unreasonable or improper⁵.

The Tribunal may make a costs order against the Gambling Commission⁶ if it considers:

- 1410 (1) that the Commission's decision or action which is the subject of the appeal was unreasonable to the extent that no reasonable person having the Commission's powers and being subject to the Commission's duties could have made that decision or taken that action; or
- 1411 (2) that the Commission's conduct in relation to the appeal was unreasonable or improper to the extent that no reasonable person having the Commission's powers and being subject to the Commission's duties would have conducted himself in that way; or
- 1412 (3) that both heads (1) and (2) above apply⁷.

If the Tribunal allows the appellant's appeal but does not make a costs order against the Commission it must, unless it considers that there is a good reason not to do so, order the Commission to pay the appellant an amount equal to any fees⁸ paid by the appellant⁹.

The Tribunal must not make a costs order or a fee reimbursement order¹⁰ without first giving the party against whom the order is made an opportunity to make representations¹¹ against the making of the order¹². Where the Tribunal makes a costs order it may make an order:

- 1413 (a) that an amount fixed by the Tribunal must be paid to the receiving party¹³;
or
- 1414 (b) that the costs are to be assessed, in England and Wales, by a costs officer, on such basis as the Tribunal specifies¹⁴.

Where the Tribunal has ordered the payment of the costs of one party to an appeal ('the judgment creditor') by another party ('the judgment debtor'), payment of those costs may be enforced by the judgment creditor in accordance with the following provision¹⁵. The judgment creditor may, on application to the county court for the district in which the judgment debtor is resident (or, if the judgment debtor is a company, where it has its registered office), enforce payment¹⁶ as if the costs were a sum payable under an order of that court¹⁷.

1 As to the Gambling Appeals Tribunal see PARA 6.

2 For these purposes, 'costs order' means an order (other than a fee reimbursement order) that a party pay the whole or part of the costs reasonably incurred by another party: Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 28(1)(a). As to the meaning of 'fee reimbursement order' see note 10; and as to the meaning of 'party' see PARA 440 note 22.

3 As to the meaning of 'appellant' see PARA 440 note 5.

- 4 As to the meaning of 'appeal' see PARA 440 note 1.
- 5 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 28(2).
- 6 As to the Gambling Commission see PARA 4.
- 7 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 28(3).
- 8 As to the meaning of 'fee' see PARA 440 note 7.
- 9 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 28(4).
- 10 'Fee reimbursement order' means an order under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 28(4): r 28(1)(b).
- 11 As to the meaning of 'representations' see PARA 441 note 38.
- 12 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 28(5).
- 13 'Paying party' and 'receiving party' mean, respectively, the parties against whom and in whose favour the Tribunal makes or considers making a costs order: Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 28(1)(c).
- 14 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 28(6).
- 15 Gambling Act 2005 s 149(1).
- 16 In accordance with the County Courts Act 1984 Pt V (ss 85-111): see **CIVIL PROCEDURE** vol 12 (2009) PARA 1283 et seq.
- 17 Gambling Act 2005 s 149(2).

UPDATE

451-453 Representation and procedure at hearing; adjournment of hearing ... Costs

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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454. Review of Gambling Appeals Tribunal's decision.

If, on the application of a party¹ or of its own initiative, the Gambling Appeals Tribunal² is satisfied that:

- 1415 (1) its final determination³ was wrongly made as a result of an error; or
- 1416 (2) new evidence has become available since the conclusion of the hearing to which that final determination relates, the existence of which could not have been reasonably known or foreseen,

the Tribunal may review and set aside that final determination⁴. An application for these purposes stating the grounds on which an application is based must be made:

- 1417 (a) orally at the hearing immediately following the announcement of the decision by the Tribunal; or
- 1418 (b) by way of written application filed⁵ not later than 14 days⁶ after the notification⁷ of the final determination is sent to the parties⁸.

Where the Tribunal proposes to review its final determination on its own initiative, it must notify the parties of that proposal not later than 14 days⁹ after the date on which the final determination was sent to the parties¹⁰.

The parties must be given an opportunity to make representations¹¹ on any application or proposal for review under these provisions and the review may be determined either by the same members of the Tribunal who decided the case or by a differently constituted tribunal appointed by the President of the Tribunal¹².

The decision of the Tribunal whether or not to set aside the final determination must be recorded in a certificate signed on behalf of the Tribunal¹³. If the Tribunal sets the final determination aside:

- 1419 (i) the Tribunal must either substitute such final determination as it thinks fit or order a rehearing before either the same or a differently constituted tribunal; and
- 1420 (ii) the certificate of the Tribunal recording the final determination¹⁴ must be sent to the appropriate member of the Tribunal staff who must immediately make such correction as may be necessary in the register¹⁵ and send a copy of the entry so corrected to each party¹⁶.

If the Tribunal does not set the final determination aside it must notify¹⁷ each of the parties in writing to this effect¹⁸.

1 As to the meaning of 'party' see PARA 440 note 22.

2 As to the Gambling Appeals Tribunal see PARA 6.

- 3 As to the meaning of 'final determination' see PARA 440 note 21.
- 4 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 29(1).
- 5 As to the meaning of 'file' see PARA 440 note 4.
- 6 As to the calculation of this period see PARA 441 note 5.
- 7 le the notification under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 27(7)(a): see PARA 452.
- 8 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 29(2).
- 9 See note 6.
- 10 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 29(3).
- 11 As to the meaning of 'representations' see PARA 441 note 38.
- 12 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 29(4). As to the President of the Gambling Appeals Tribunal see PARA 6.
- 13 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 29(5). As to proof of documents issued by the Tribunal see PARA 443 note 6.
- 14 le in accordance with the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 29(5).
- 15 As to the meaning of 'the register' see PARA 440 note 21.
- 16 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 29(6).
- 17 As to the method of notification see PARA 440 note 2.
- 18 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 29(7).

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(E) FAILURE TO COMPLY WITH PROCEDURAL RULES AND PROCEDURAL IRREGULARITIES

455. Sanctions for failure to comply with the relevant rules or with directions given under them.

Where a party¹ has, without reasonable excuse, failed to comply with a direction² given under the relevant rules³ or with a provision of those rules, the Gambling Appeals Tribunal⁴ may take any one or more of the steps set out in heads (1) to (3) below in respect of that party⁵. Those steps are:

- 1421 (1) to make a costs order⁶ against that party;
- 1422 (2) where that party is the appellant⁷, to dismiss the whole or part of the appeal⁸;
- 1423 (3) where that party is the Gambling Commission⁹, to strike out the whole or part of the statement of case¹⁰ and, where appropriate, to direct that the Commission be disqualified from contesting the appeal altogether¹¹.

The Tribunal must not, however, take any of those steps in respect of a party unless it has given that party an opportunity to make representations¹² against the taking of any such steps¹³.

- 1 As to the meaning of 'party' see PARA 440 note 22.
- 2 As to the meaning of 'direction' see PARA 440 note 16.
- 3 Ie the Gambling Appeals Tribunal Rules 2006, SI 2006/3293: see PARA 440 et seq.
- 4 As to the Gambling Appeals Tribunal see PARA 6.
- 5 Gambling Appeals Tribunal Rules 2006, SI 2006/329, r 35(1).
- 6 As to costs orders and their enforcement see PARA 453.
- 7 As to the meaning of 'appellant' see PARA 440 note 5.
- 8 As to the meaning of 'appeal' see PARA 440 note 1.
- 9 As to the Gambling Commission see PARA 4.
- 10 As to the meaning of 'statement of case' see PARA 441.
- 11 Gambling Appeals Tribunal Rules 2006, SI 2006/329, r 35(2).
- 12 As to the meaning of 'representations' see PARA 441 note 38.
- 13 Gambling Appeals Tribunal Rules 2006, SI 2006/329, r 35(3).

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456. Procedural irregularities.

Any irregularity resulting from failure to comply with either any provision of the relevant rules¹ or of any direction² of the Gambling Appeals Tribunal³ before the Tribunal has reached its final determination⁴ does not of itself render the proceedings void⁵. Where any such irregularity comes to the attention of the Tribunal, the Tribunal may, and must if it considers that any person may have been prejudiced by the irregularity, give such directions as it thinks just to cure or waive the irregularity⁶.

Clerical mistakes in any document⁷ recording a direction or decision, including the final determination, of the Tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by a certificate signed by the Tribunal⁸.

1 le the Gambling Appeals Tribunal Rules 2006, SI 2006/3293: see PARA 440 et seq.

2 As to the meaning of 'direction' see PARA 440 note 16.

3 As to the Gambling Appeals Tribunal see PARA 6.

4 As to the meaning of 'final determination' see PARA 440 note 21.

5 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 37(1).

6 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 37(2).

7 As to the meaning of 'document' see PARA 440 note 3.

8 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 37(3). As to the signature of documents see PARA 440 note 3; and as to proof of documents issued by the Tribunal see PARA 443 note 6.

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D. APPEALS FROM THE GAMBLING APPEALS TRIBUNAL

457. Right of appeal to the High Court.

A party to proceedings¹ before the Gambling Appeals Tribunal² may appeal on a point of law to the High Court, where the Tribunal proceedings were held in England or Wales³. Such an appeal may be brought only with the permission of the Tribunal⁴, or, if the Tribunal refuses permission, with the permission of the court⁵.

1 le proceedings under the Gambling Act 2005 s 141: see PARA 434.

2 As to the Gambling Appeals Tribunal see PARA 6; and as to procedure before the Tribunal see PARA 440 et seq.

3 Gambling Act 2005 s 143(1)(a).

4 As to applications for permission see PARA 458.

5 Gambling Act 2005 s 143(2). As to permission to appeal to the High Court see generally **CIVIL PROCEDURE** vol 12 (2009) PARA 1680.

UPDATE

457-459 Appeals from the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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458. Application to the Gambling Appeals Tribunal for permission to bring an appeal.

An application to the Gambling Appeals Tribunal¹ for permission to bring an appeal against the Tribunal's final determination² may be made:

- 1424 (1) orally at the hearing immediately following the announcement of the final determination by the Tribunal;
- 1425 (2) by way of written application filed³ not later than 14 days⁴ after the notification of the final determination is sent to the party⁵ making the application; or
- 1426 (3) by way of written application filed not later than 14 days⁶ after the notification⁷ that a decision is not to be set aside following a review⁸.

When an application is made under head (2) or head (3) above, it must be signed⁹ by the applicant¹⁰ and must:

- 1427 (a) state the name and address of the applicant and any representative of the applicant¹¹;
- 1428 (b) identify the decision of the Tribunal to which the application relates; and
- 1429 (c) state the grounds on which the applicant intends to rely in the appeal from the Tribunal¹².

The application for permission to bring an appeal against the final determination of the Tribunal must be decided without an oral hearing unless either the application is made immediately following the hearing or the Tribunal considers that a hearing is desirable¹³. The decision of the Tribunal on an application for permission to bring an appeal against the final determination of the Tribunal, together with the reasons for its decision, must be recorded in writing¹⁴. Unless the decision is given immediately following an oral application, the Tribunal must notify¹⁵ the applicant and each of the other parties of the decision and the reasons for the decision in writing¹⁶. Where the Tribunal refuses the application, that notification to the applicant must include notification of the time within which an application for permission to bring an appeal against the Tribunal's final determination may be made, in England and Wales, to the High Court¹⁷.

- 1 As to the Gambling Appeals Tribunal see PARA 6.
- 2 As to the meaning of 'final determination' see PARA 440 note 21.
- 3 As to the meaning of 'file' see PARA 440 note 4.
- 4 As to the calculation of this period see PARA 441 note 5.
- 5 As to the meaning of 'party' see PARA 440 note 22.
- 6 See note 4.

7 le the notification the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 29(7): see PARA 454.

8 See the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 30(1).

9 As to the signature of documents see PARA 440 note 3.

10 'Applicant' means a person who applies for permission to appeal from a final determination of the Tribunal: Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 2(2).

11 Where a representative, other than a legal representative, is named under the Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 30(2)(a) (see head (a) in the text) and the application is signed by the representative on behalf of the applicant, the applicant must file with the application a written statement, signed by him, that the representative is authorised so to act: r 30(3). As to the meaning of 'legal representative' see PARA 440 note 12.

12 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 30(2).

13 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 31(1).

14 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 31(2).

15 As to the method of notification see PARA 440 note 2.

16 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 31(3).

17 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 31(4). As to permission to appeal to the High Court see generally **CIVIL PROCEDURE** vol 12 (2009) PARA 1680.

UPDATE

457-459 Appeals from the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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459. Powers of the High Court on hearing the appeal.

On an appeal from the Gambling Appeals Tribunal¹ on a point of law², the High Court may:

- 1430 (1) affirm the Tribunal's decision;
- 1431 (2) quash the Tribunal's decision;
- 1432 (3) remit the matter to the Tribunal either generally, or for determination in accordance with a finding made or direction given by the court³.

Where the High Court remits an appeal to the Tribunal under head (3) above for rehearing and determination ('rehearing'), the rules relating to procedure before the Tribunal⁴ apply, so far as relevant, to the rehearing as they did to the original hearing of the appeal⁵. The Tribunal must, within 28 days⁶ of the remittal, give directions⁷ in relation to the rehearing⁸.

- 1 As to the Gambling Appeals Tribunal see PARA 6.
- 2 Ie an appeal under the Gambling Act 2005 s 143(1): see PARA 457.
- 3 Gambling Act 2005 s 143(3).
- 4 Ie the Gambling Appeals Tribunal Rules 2006, SI 2006/3293: see PARA 440 et seq.
- 5 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 32(1), (2).
- 6 As to the calculation of this period see PARA 441 note 5.
- 7 As to the meaning of 'direction' see PARA 440 note 16.
- 8 Gambling Appeals Tribunal Rules 2006, SI 2006/3293, r 32(3).

UPDATE

457-459 Appeals from the Gambling Appeals Tribunal

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(5) PREMISES LICENCES

(i) Nature and Form of Licences

460. Nature of premises licence.

A premises licence¹ is a licence which states that it authorises² premises³ to be used for:

- 1433 (1) the operation of a casino⁴ (a 'casino premises licence')⁵;
- 1434 (2) the provision of facilities⁶ for the playing of bingo⁷ (a 'bingo premises licence')⁸;
- 1435 (3) making Category B gaming machines⁹ available for use (an 'adult gaming centre premises licence')¹⁰;
- 1436 (4) making Category C gaming machines¹¹ available for use (a 'family entertainment centre premises licence')¹²; or
- 1437 (5) the provision of facilities for betting¹³, whether by making or accepting bets¹⁴, by acting as a betting intermediary¹⁵ or by providing other facilities for the making or accepting of bets (a 'betting premises licence')¹⁶.

Neither a premises licence nor any provision of Part 8 of the Gambling Act 2005¹⁷ disappplies or provides a defence to the offence¹⁸ of unlawfully providing facilities for gambling¹⁹. It is generally an offence to use premises, or cause or permit them to be used, for gambling without a premises licence²⁰.

In respect of any time when the Horserace Totalisator Board ('the Tote') has been dissolved²¹ and the Gambling Commission has issued the exclusive licence to the successor company²², a premises licence issued under Part 8 of the 2005 Act does not authorise the use of premises for doing anything prohibited by the relevant provision²³ of the Horserace Betting and Olympic Lottery Act 2004²⁴.

1 'Premises licence' means a licence issued under the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9) (see the text and notes 2-19; and PARA 462 et seq): s 353(1).

2 As to the meaning of 'authorise' see PARA 349 note 5.

3 As to the meaning of 'premises' see PARA 311 note 5. See also PARA 461.

4 As to the meaning of 'casino' see PARA 311.

5 Gambling Act 2005 s 150(1)(a). A casino premises licence is (1) a 'regional casino premises licence' if it relates to a regional casino; (2) a 'large casino premises licence' if it relates to a large casino; and (3) a 'small casino premises licence' if it relates to a small casino: Gambling Act 2005 s 150(2). As to categories of casinos see the Categories of Casino Regulations 2008, SI 2008/1330; and PARA 311. Note that no provision has been made for regional casinos.

The Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 65 applies to a conversion application for a casino premises licence and a casino premises licence issued on the grant of such an application in pursuance of Sch 4 para 54(4) (conversion of existing licences): Sch 4 para 65(1). The Gambling Act 2005 s 150(2) (which describes the kinds of casino premises licences) is not to apply to a casino premises licence to which the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 65 applies and instead such a licence is to be referred to as a

converted casino premises licence: Sch 4 para 65(4). A converted casino premises licence is a licence which states that it authorises premises to be used for the operation of a casino or for providing other facilities for gaming (apart from bingo); and the Gambling Act 2005 s 150(1)(a) (see head (1) in the text) is to be modified accordingly: Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 65(5). As to the provisions of Sch 4 para 65 see further *R (on the application of British Casino Association Ltd) v Secretary of State for Culture, Media and Sport* [2007] EWHC 1312 (Admin), [2007] LLR 437, [2007] All ER (D) 79 (Jun), cited in PARA 509 note 15.

6 As to the meaning of 'providing facilities' for gambling see PARA 309.

7 As to the meaning of 'bingo' see PARA 349 note 8.

8 Gambling Act 2005 s 150(1)(b).

9 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547; as to categories of gaming machine generally see PARA 548; and as to the meaning of 'Category B gaming machine' see PARA 550. The reference to a Category B machine for these purposes is to be treated as referring to sub-categories B3 or B4 (see PARA 550 at heads (3), (5)): Categories of Gaming Machine Regulations 2007, SI 2007/2158, reg 6(2).

10 Gambling Act 2005 s 150(1)(c). As to the meaning of 'adult gaming centre' see PARA 349 note 14.

11 As to the meaning of 'Category C gaming machine' see PARA 551.

12 Gambling Act 2005 s 150(1)(d). As to the meaning of 'licensed family entertainment centre' see PARA 363 note 3.

13 As to the meaning of 'betting' see PARA 312.

14 As to the meaning of 'accepting a bet' see PARA 312 note 2.

15 As to the meaning of 'betting intermediary', and as to when a person acts as a betting intermediary, see PARA 315.

16 Gambling Act 2005 s 150(1)(e).

17 Ie the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9): see the text and notes 1-16; and PARA 461 et seq.

18 Ie the offence under the Gambling Act 2005 s 33: see PARA 615.

19 See the Gambling Act 2005 s 150(3).

20 See the Gambling Act 2005 s 37; and PARA 616.

21 Ie at any time after the coming into force of the Horserace Betting and Olympic Lottery Act 2004 Pt 1 (ss 1-14) (not fully in force): see PARA 9-10.

22 Ie under the Horserace Betting and Olympic Lottery Act 2004 s 8 (not yet in force).

23 Ie prohibited by the Horserace Betting and Olympic Lottery Act 2004 s 8(5)(b) (not yet in force).

24 Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 8(3) (added by SI 2007/2169).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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461. Vehicles and vessels.

A premises licence¹ may not be issued in relation to a vehicle² or part of a vehicle³.

A premises licence may be issued:

- 1438 (1) in relation to all or part of a passenger vessel⁴;
- 1439 (2) in relation to all or part of a vessel⁵ situated at a fixed place in or on water⁶;

but may not be issued in relation to all or part of a vessel to which neither head (1) nor head (2) above applies⁷.

1 As to the meaning of 'premises licence' see PARA 460 note 1.

2 As to the meaning of 'vehicle' see PARA 311 note 5.

3 Gambling Act 2005 s 211(1)(a).

4 Gambling Act 2005 s 211(1)(b). 'Passenger vessel' means a vessel which is carrying or expected to carry at least one passenger: s 353(1). As to the meaning of 'vessel' see PARA 311 note 5.

5 In the meaning of the Gambling Act 2005 s 353(1): see PARA 311 note 5.

6 Gambling Act 2005 s 211(1)(c). In relation to a vessel, a reference in Pt 8 (ss 150-213, Sch 9) (see PARAS 460, 462 et seq) to a place in which premises are wholly or partly situated must be construed (1) in the case of a vessel (within the meaning of s 353(1)) situated at a fixed place in or on water, as a reference to that place; (2) in the case of a vessel which is permanently moored at a place, as a reference to that place; (3) in the case of a vessel which is habitually moored at one place more frequently or for longer periods than at any other place, as a reference to that place; and (4) in any other case, as a reference to any place at which a vessel is moored or is likely to be moored, or to the place in the United Kingdom nearest to any place at which a vessel is or is likely to be, while activities are carried on in the vessel in reliance on a premises licence: s 211(3). As to the meaning of 'United Kingdom' see PARA 16 note 8.

7 Gambling Act 2005 s 211(1)(d).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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462. Combined licences.

A premises licence¹ may not, subject to certain exceptions², authorise³ the use of premises⁴ for activities of more than one of the specified⁵ kinds⁶; but this does not apply in the case of a track⁷. Nor, subject to the following provision, may a premises licence be issued in respect of premises if a premises licence already has effect in relation to the premises⁸.

More than one premises licence may have effect in relation to a track provided that:

- 1440 (1) each licence relates to a specified area of the track; and
- 1441 (2) not more than one premises licence has effect in relation to any area of the track⁹.

If a person applies for a premises licence in respect of an area of a track ('a subsidiary licence') and a premises licence already has effect in respect of the whole track or a part of the track that includes that area ('the main licence'), then:

- 1442 (a) the application for the subsidiary licence must be accompanied by an application¹⁰ to vary the main licence so that it does not have effect in relation to the area to which the subsidiary licence is to relate; and
- 1443 (b) the application for the subsidiary licence may be granted only after, or together with, the grant of the application for variation¹¹.

1 As to the meaning of 'premises licence' see PARA 460 note 1.

2 Ie subject to the Gambling Act 2005 ss 172-174 (see PARAS 487, 489, 491, 505, 509) and to s 152(2) (see the text and note 6).

3 As to the meaning of 'authorise' see PARA 349 note 5.

4 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

5 Ie the kinds specified in the Gambling Act 2005 s 150(a)-(e): see PARA 460 at heads (1)-(5).

6 Gambling Act 2005 s 152(1)(a).

7 Gambling Act 2005 s 152(2). As to the meaning of 'track' see PARA 372 note 8.

8 Gambling Act 2005 s 152(1)(b). Section 152(1)(b) does not apply in relation to an application for a provisional statement: s 204(4). As to applications for provisional statements see PARA 474.

9 Gambling Act 2005 s 152(3).

10 Ie an application under the Gambling Act 2005 s 187: see PARA 520.

11 Gambling Act 2005 s 152(4).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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463. Form of premises licence.

A premises licence¹ must:

- 1444 (1) specify the name of the person to whom it is issued²;
- 1445 (2) specify a home or business address of that person³;
- 1446 (3) specify the premises⁴ to which it relates⁵;
- 1447 (4) specify the activities for which it authorises⁶ the premises to be used⁷;
- 1448 (5) specify any condition attached⁸ by the licensing authority⁹;
- 1449 (6) specify any exclusion of a default condition effected¹⁰ by the licensing authority¹¹;
- 1450 (7) include a plan of the premises¹²; and
- 1451 (8) if a period is prescribed¹³ at the end of which the licence will expire, unless renewed or terminated earlier, specify the period¹⁴.

The Secretary of State¹⁵ may make regulations about the form of a premises licence¹⁶ and the content of a premises licence¹⁷, which may, in particular, require the inclusion of information about mandatory conditions, default conditions or conditions attached to the licence by virtue of a provision of Part 8¹⁸ of the Gambling Act 2005¹⁹.

In addition to the matters set out in heads (1) to (8) above, a premises licence must contain the following information:

- 1452 (a) the date on which the licence takes effect²⁰;
- 1453 (b) the operating licence number²¹ of the relevant operating licence²² held by the holder of the premises licence²³, unless:
 - 89 142. (i) the premises licence authorises a track²⁴ to be used for accepting bets²⁵; or
 - 143. (ii) the premises licence is a converted premises licence²⁶ and the holder of the licence is applying for a relevant operating licence but the application has not been determined²⁷;
- 90 1454 (c) the name of the licensing authority which issued the licence and the address of its principal office²⁸;
- 1455 (d) the number of the premises licence, being a number given by the licensing authority to the licence which is unique to that licence²⁹.

Where a premises licence is varied³⁰, the licence must specify the date on which the variations to the licence take effect³¹.

1 As to the meaning of 'premises licence' see PARA 460 note 1.
 2 Gambling Act 2005 s 151(1)(a).
 3 Gambling Act 2005 s 151(1)(b).
 4 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

- 5 Gambling Act 2005 s 151(1)(c).
- 6 As to the meaning of 'authorise' see PARA 349 note 5.
- 7 Gambling Act 2005 s 151(1)(d).
- 8 Ie under the Gambling Act 2005 169(1)(a): see PARA 486.
- 9 Gambling Act 2005 s 151(1)(e). As to the licensing authorities see PARA 3.
- 10 Ie under the Gambling Act 2005 s 169(1)(b): see PARA 486.
- 11 Gambling Act 2005 s 151(1)(f).
- 12 Gambling Act 2005 s 151(1)(g). The plan which is to be included in the premises licence by virtue of s 151(1)(g) must be a scale plan which complies with the requirements of the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 4(2)-(9) (see PARA 471) as modified in accordance with reg 21(2), (3): reg 21(1). Any reference to the premises to which the application relates in reg 4(2)-(9) is to have effect for these purposes as a reference to the premises to which the premises licence relates: reg 21(2). Where a requirement of reg 4(3)-(9) is expressed only to apply to an application for a premises licence of a particular kind, for these purposes that requirement is to apply only to a premises licence of the same kind: reg 21(3).
- 13 Ie under the Gambling Act 2005 s 191: see PARA 522.
- 14 Gambling Act 2005 s 151(1)(h).
- 15 As to the Secretary of State see PARA 2.
- 16 Gambling Act 2005 s 151(2)(a). For the prescribed form of a premises licence see the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 22, Sch 9.
- 17 For the prescribed content of a premises licence see the text and notes 20-31.
- 18 Ie the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9): see PARAS 460-462, 464 et seq.
- 19 Gambling Act 2005 s 151(2)(b).
- 20 Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 20(1)(a).
- 21 'Operating licence number', in relation to an operating licence, means the reference number given by the Gambling Commission to the operating licence which is unique to that licence and which is specified in it: Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 2(1). As to the meaning of 'operating licence' see PARA 349 note 2; and as to the Gambling Commission see PARA 4.
- 22 For these purposes, 'relevant operating licence' means, in relation to a person holding a premises licence, an operating licence which authorises the person to carry out the activities for which the premises licence authorises the premises to be used: Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 2(1).
- 23 Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 20(1)(b).
- 24 As to the meaning of 'track' see PARA 372 note 8.
- 25 Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 20(2), (3). As to the meaning of 'accepting a bet' see PARA 312 note 2.
- 26 For these purposes, 'converted premises licence' means a premises licence issued in pursuance of the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 54 (which provides for the conversion of licences and other documents under enactments repealed by the Gambling Act 2005 into premises licences under that Act); and any reference to a 'converted casino premises licence' is to be construed accordingly: Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 2(1).
- 27 Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 20(2), (4).

28 Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 20(1)(c).

29 Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 20(1)(d).

30 As to variation of premises licences see PARA 520.

31 Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 20(5).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(ii) Functions of Licensing Authorities/464. Principles to be applied.

(ii) Functions of Licensing Authorities

464. Principles to be applied.

In exercising its functions under Part 8 of the Gambling Act 2005¹ a licensing authority² must aim to permit the use of premises³ for gambling⁴ in so far as the authority thinks it:

- 1456 (1) is in accordance with any relevant code of practice⁵;
- 1457 (2) is in accordance with any relevant guidance issued⁶ by the Gambling Commission⁷;
- 1458 (3) subject to heads (1) and (2) above, is reasonably consistent with the licensing objectives⁸; and
- 1459 (4) subject to heads (1) to (3) above, is in accordance with the three-year statement of licensing policy published⁹ by the authority¹⁰.

In determining whether to grant a premises licence¹¹ a licensing authority may not have regard to the expected demand for the facilities which it is proposed to provide¹². A licensing authority may, however, resolve not to issue casino premises licences¹³ and the above provisions are subject to that power¹⁴.

In making a decision in respect of an application under Part 8 of the 2005 Act, a licensing authority must not have regard to whether or not a proposal by the applicant is likely to be permitted in accordance with the law relating to planning or building¹⁵; but a decision by a licensing authority under that Part does not constrain any later decision by the authority under the law relating to planning or building¹⁶.

¹ ie under the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9): see PARAS 460-463; the text and notes 2-16; and PARA 465 et seq.

² As to the licensing authorities see PARA 3.

³ As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

⁴ As to the meaning of 'gambling' see PARA 308.

⁵ ie any relevant code of practice under the Gambling Act 2005 s 24: see PARA 337.

⁶ ie issued under the Gambling Act 2005 s 25: see PARA 338.

⁷ As to the Gambling Commission see PARA 4.

⁸ As to the licensing objectives see PARA 331.

⁹ ie under the Gambling Act 2005 s 349: see PARA 344.

¹⁰ Gambling Act 2005 s 153(1).

¹¹ As to the meaning of 'premises licence' see PARA 460 note 1.

¹² Gambling Act 2005 s 153(2).

¹³ See the Gambling Act 2005 s 166; and PARA 465.

14 Gambling Act 2005 ss 153(3), 166(6).

15 Gambling Act 2005 s 210(1).

16 Gambling Act 2005 s 210(2).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(ii) Functions of Licensing Authorities/465. Resolution not to issue casino premises licences.

465. Resolution not to issue casino premises licences.

A licensing authority¹ may resolve not to issue casino premises licences²; and in passing such a resolution a licensing authority may have regard to any principle or matter³. Such a resolution:

- 1460 (1) must apply to the issue of casino premises licences generally⁴;
- 1461 (2) must specify the date on which it takes effect⁵;
- 1462 (3) may be revoked by a further resolution⁶;
- 1463 (4) lapses at the end of the period of three years beginning with the date on which it takes effect, without prejudice to the ability to pass a new resolution⁷;
- 1464 (5) may be passed whether or not the licensing authority has already issued casino premises licences⁸;
- 1465 (6) has no effect in relation to a casino premises licence issued before the resolution takes effect⁹;
- 1466 (7) has no effect in relation to premises in respect of which a provisional statement¹⁰ relating to the operation of a casino is in force when the resolution takes effect¹¹;
- 1467 (8) has no effect in relation to anything converted¹² into a casino premises licence¹³;
- 1468 (9) does not affect the issuing of a casino premises licence in accordance with a requirement by virtue of the relevant¹⁴ transitional provisions¹⁵; and
- 1469 (10) may not be taken into account in conducting a review¹⁶ of a casino premises licence¹⁷.

Such a resolution must be published by being included in a statement or revision¹⁸ of the authority's three-year licensing policy¹⁹.

The Secretary of State²⁰ may by order require a licensing authority to consider whether or not to pass such a resolution²¹. Such an order may:

- 1470 (a) be directed to a particular licensing authority or to a class or description of licensing authority²²;
- 1471 (b) require the licensing authority to consult such persons or classes of persons as it thinks are likely to be affected by the resolution, having regard to any guidance given by the Secretary of State²³;
- 1472 (c) require the licensing authority to take other procedural steps²⁴;
- 1473 (d) specify a period within which the consideration must take place²⁵;
- 1474 (e) require consideration once or at specified intervals²⁶.

A licensing authority's functions under the above provisions are not²⁷ delegated to the licensing committee²⁸ of the authority and may not be delegated by the authority²⁹.

1 As to the licensing authorities see PARA 3.

2 Gambling Act 2005 s 166(1). As to the meaning of 'casino premises licence' see PARA 460 at head (1).

3 Gambling Act 2005 s 166(2).

- 4 Gambling Act 2005 s 166(3)(a).
- 5 Gambling Act 2005 s 166(3)(b).
- 6 Gambling Act 2005 s 166(3)(c).
- 7 Gambling Act 2005 s 166(3)(d).
- 8 Gambling Act 2005 s 166(4)(a).
- 9 Gambling Act 2005 s 166(4)(b).
- 10 As to provisional statements see the Gambling Act 2005 ss 204, 205; and PARAS 474-142.
- 11 Gambling Act 2005 s 166(4)(c).
- 12 Ie by virtue of the Gambling Act 2005 Sch 18 (transitional provisions).
- 13 Gambling Act 2005 s 166(4)(d).
- 14 Ie by virtue of the Gambling Act 2005 Sch 18 (transitional provisions).
- 15 Gambling Act 2005 s 166(4)(e).
- 16 Ie under the Gambling Act 2005 s 201: see PARA 530.
- 17 Gambling Act 2005 s 166(4)(f).
- 18 Ie under the Gambling Act 2005 s 349: see PARA 344.
- 19 Gambling Act 2005 s 166(5).
- 20 As to the Secretary of State see PARA 2.
- 21 Gambling Act 2005 s 166(7).
- 22 Gambling Act 2005 s 166(8)(a).
- 23 Gambling Act 2005 s 166(8)(b).
- 24 Gambling Act 2005 s 166(8)(c).
- 25 Gambling Act 2005 s 166(8)(d).
- 26 Gambling Act 2005 s 166(8)(e).
- 27 Ie by virtue of the Gambling Act 2005 s 154(1): see PARA 466.
- 28 Ie the licensing committee established under the Licensing Act 2003 s 6: see PARA 40.
- 29 Gambling Act 2005 s 154(2)(b).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(ii) Functions of Licensing Authorities/466. Delegation of licensing authority functions.

466. Delegation of licensing authority functions.

With certain exceptions¹, the functions under Part 8 of the Gambling Act 2005² of a licensing authority in England and Wales³ are delegated to the licensing committee⁴ of the authority⁵.

Where a licensing committee is unable to discharge any function delegated to it in accordance with the above provisions because of the number of its members who are unable to take part in the consideration or discussion of any matter or vote on any question with respect to it, the committee must refer the matter back to the licensing authority and the authority must discharge that function⁶.

1 A licensing authority's functions under the Gambling Act 2005 ss 166, 349 are not delegated by virtue of s 154(1) and may not be delegated by the authority: see s 154(2)(a), (c); and PARAS 344, 465. A licensing authority's functions under s 212 are not delegated by virtue of s 154(1) but may be delegated by the authority: see s 154(2)(b); and PARA 470.

2 Ie under the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9): see PARAS 460-465, 467 et seq.

3 As to the licensing authorities see PARA 3.

4 Ie the licensing committee established under the Licensing Act 2003 s 6: see PARA 40.

5 Gambling Act 2005 s 154(1).

6 Licensing Act 2003 s 7(9) (applied for these purposes by the Gambling Act 2005 s 154(3)(a)).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(ii) Functions of Licensing Authorities/467. Proceedings of licensing committee.

467. Proceedings of licensing committee.

A licensing committee¹ may establish one or more sub-committees consisting of three members of the committee². Subject to regulations³, each licensing committee may regulate its own procedure and that of its sub-committees⁴.

1 As to licensing committees see PARA 40; and as to the delegation of functions under the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9) to such committees see PARA 466.

2 Licensing Act 2003 s 9(1) (s 9 applied for these purposes by the Gambling Act 2005 s 154(5)).

3 Regulations may make provision about: (1) the proceedings of licensing committees and their sub-committees (including provision about the validity of proceedings and the quorum for meetings); (2) public access to the meetings of those committees and sub-committees; (3) the publicity to be given to those meetings; (4) the agendas and records to be produced in respect of those meetings; and (5) public access to such agendas and records and other information about those meetings: Licensing Act 2003 s 9(2) (as applied: see note 2). For these purposes, regulations may, in particular, make provision which applies: (1) only to functions under the Licensing Act 2003 (see PARA 41 note 3); (2) only in relation to functions under the Gambling Act 2005 Pt 8 (see the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173; and PARA 476 et seq); or (3) differently in relation to functions under the Licensing Act 2003 and functions under the Gambling Act 2005 Pt 8: s 154(5).

4 Licensing Act 2003 s 9(3) (as applied: see note 2).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(ii) Functions of Licensing Authorities/468. Sub-delegation of functions of licensing committee etc.

468. Sub-delegation of functions of licensing committee etc.

A licensing committee¹ may arrange for the discharge of any functions exercisable by it:

- 1475 (1) by a sub-committee established by the licensing committee; or
- 1476 (2) by an officer of the licensing authority²;

and such arrangements may provide for more than one sub-committee or officer to discharge the same function concurrently³. Where arrangements are made under head (1) above, then the sub-committee may⁴ in turn arrange for the discharge of the function concerned by an officer of the licensing authority⁵. The power so exercisable by a sub-committee established by a licensing committee is subject to any direction given by that committee to the sub-committee⁶.

Arrangements may not, however, be made under head (1) or head (2) above for the discharge by an officer of any of certain specified⁷ functions⁸.

¹ As to licensing committees see PARA 40; and as to the delegation to such committees of functions under the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9) see PARA 466.

² Licensing Act 2003 s 10(1) (s 10 applied for these purposes by the Gambling Act 2005 s 154(3)(b)).

³ Licensing Act 2003 s 10(3) (as applied: see note 2).

⁴ ie subject to the Licensing Act 2003 s 10(4), (5): see the text and notes 6-8.

⁵ Licensing Act 2003 s 10(2) (as applied: see note 2).

⁶ Licensing Act 2003 s 10(5) (as applied: see note 2).

⁷ The specified functions are as follows (Licensing Act 2003 s 10(4)(a)-(e) (substituted for these purposes by the Gambling Act 2005 s 154(4)), ie:

- 120 (1) determination of an application for a premises licence in respect of which representations have been made under s 161 (and not withdrawn) (see PARA 473);
- 121 (2) determination of an application for the variation of a premises licence in respect of which representations have been made under s 161 as applied by s 187 (and not withdrawn) (see PARA 520);
- 122 (3) determination of an application for transfer following representations by the Gambling Commission (see PARA 521);
- 123 (4) determination of an application for a provisional statement under s 204 in respect of which representations have been made under s 161 as applied by s 204 (and not withdrawn) (see PARA 474); and
- 124 (5) a review of a premises licence under s 201 (see PARA 530).

As to the meaning of 'premises licence' see PARA 460 note 1; and as to the Gambling Commission see PARA 4.

⁸ See the Licensing Act 2003 s 10(4) (as applied (see note 2) and amended for these purposes (see note 7)).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(ii) Functions of Licensing Authorities/469. Register of premises licences.

469. Register of premises licences.

A licensing authority¹ must:

- 1477 (1) maintain a register of premises licences² issued by the authority together with such other information as may be prescribed by regulations made by the Secretary of State³;
- 1478 (2) make the register and information available for inspection by members of the public at all reasonable times⁴; and
- 1479 (3) make arrangements for the provision of a copy of an entry in the register, or of information, to a member of the public on request⁵.

A licensing authority may, however, refuse to provide a copy of an entry or of information unless the person seeking it pays a reasonable fee specified by the authority⁶.

The Secretary of State may make regulations about the form of the register and the manner in which it is maintained⁷. He may also make regulations:

- 1480 (a) requiring licensing authorities to give to the Gambling Commission⁸ specified information about premises licences issued by them⁹;
- 1481 (b) requiring the Commission to maintain a register of the information provided to it under head (a) above¹⁰;
- 1482 (c) requiring the Commission to grant access to the register to members of the public without charge¹¹;
- 1483 (d) requiring the Commission to make copies of entries available on request, and on payment of a reasonable fee, to members of the public¹²; and
- 1484 (e) excusing licensing authorities, wholly or partly, from compliance with heads (1) to (3) above¹³.

1 As to the licensing authorities see PARA 3.

2 As to the meaning of 'premises licence' see PARA 460 note 1.

3 Gambling Act 2005 ss 156(1), 213(g). As to the Secretary of State see PARA 2.

4 Gambling Act 2005 s 156(1)(b).

5 Gambling Act 2005 s 156(1)(c).

6 Gambling Act 2005 s 156(2).

7 Gambling Act 2005 s 156(3). At the date at which this volume states the law, no such regulations had been made.

8 As to the Gambling Commission see PARA 4.

9 Gambling Act 2005 s 156(4)(a). At the date at which this volume states the law, no such regulations had been made.

10 Gambling Act 2005 s 156(4)(b). At the date at which this volume states the law, no such regulations had been made.

11 Gambling Act 2005 s 156(4)(c). At the date at which this volume states the law, no such regulations had been made.

12 Gambling Act 2005 s 156(4)(d). At the date at which this volume states the law, no such regulations had been made.

13 Gambling Act 2005 s 156(4)(e). At the date at which this volume states the law, no such regulations had been made.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(ii) Functions of Licensing Authorities/470. Determination of fees.

470. Determination of fees.

Regulations made by the Secretary of State¹ under Part 8 of the Gambling Act 2005² prescribing a fee may provide for the amount of the fee to be determined by a licensing authority³ and may, if they make such provision, specify constraints on a licensing authority's power to determine the amount of the fee⁴. Where provision is so made for the amount of a fee to be determined by a licensing authority, the authority:

- 1485 (1) must determine the amount of the fee;
- 1486 (2) may determine different amounts for different classes of case specified in the regulations, but may not otherwise determine different amounts for different cases;
- 1487 (3) must publish⁵ the amount of the fee as determined from time to time; and
- 1488 (4) must aim to ensure that the income from fees of that kind as nearly as possible equates to the costs of providing the service to which the fee relates, including a reasonable share of expenditure which is referable only partly or only indirectly to the provision of that service⁶.

¹ As to the Secretary of State see PARA 2.

² Ie under the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9): see PARAS 460 et seq, 471 et seq.

³ As to the licensing authorities see PARA 3.

⁴ Gambling Act 2005 s 212(1). Regulations by virtue of s 212 may (without prejudice to the generality of s 355: general provisions about regulations, orders and rules): (1) make provision which applies generally or only to specified authorities or classes of authority; (2) make different provision for different authorities or classes of authority; and (3) make transitional provision in respect of a case where an authority enters or leaves a class: s 212(4). A class of authority for the purposes of s 212(4) may, in particular, be defined by reference to categories assigned under the Local Government Act 2003 s 99 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 789): s 212(5).

For the regulations which have been made under s 212 see the Gambling (Premises Licence Fees) (England and Wales) Regulations 2007, SI 2007/479.

⁵ As to the meaning of 'publish' see PARA 344 note 3.

⁶ Gambling Act 2005 s 212(2). For the purposes of s 212(2)(d) (see head (4) in the text) a licensing authority must compare income and costs in such manner, at such times and by reference to such periods as the authority, having regard to any guidance issued by the Secretary of State, thinks appropriate: s 212(3).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(iii) Application for Premises Licence or Provisional Statement/A. APPLICATION FOR PREMISES LICENCE/471. Making of application.

(iii) Application for Premises Licence or Provisional Statement

A. APPLICATION FOR PREMISES LICENCE

471. Making of application.

A person may apply to a licensing authority¹ for a premises licence² to be issued to him authorising the use of premises³ to carry on a specified⁴ activity, namely:

- 1489 (1) operating a casino⁵;
- 1490 (2) providing facilities⁶ for the playing of bingo⁷;
- 1491 (3) make a gaming machine⁸ available for use;
- 1492 (4) providing other facilities for gaming⁹; or
- 1493 (5) providing facilities for betting¹⁰, whether by making or accepting bets¹¹, by acting as a betting intermediary¹² or by providing other facilities for the making or accepting of bets¹³.

An application must be made to a licensing authority in whose area the premises are wholly or partly situated¹⁴. Except in the case of an application for a premises licence which authorises a track¹⁵ to be used for accepting bets and which does not also¹⁶ authorise it to be used for another purpose¹⁷, an application may be made only by a person who:

- 1494 (a) holds an operating licence¹⁸ which authorises¹⁹ him to carry on the activity in respect of which the premises licence is sought²⁰; or
- 1495 (b) has made an application, which has not yet been determined, for an operating licence which authorises him to carry on the activity in respect of which the premises licence is sought²¹.

An application may be made only by a person who has a right to occupy the premises to which the application relates²². It must be made in the prescribed²³ form²⁴ and manner²⁵, must contain or be accompanied by the prescribed information or documents²⁶ and must be accompanied by the prescribed fee²⁷. It must also be accompanied by a scale plan of the premises to which the application relates²⁸.

It has been held that, provided that the application fulfils the statutory requirements, an application for a premises licence may be made notwithstanding that the premises in question have not yet been constructed or have not yet been altered so as to make them suitable for carrying on the proposed activities; a person is not obliged to use, instead, the procedure for making an application for a provisional statement²⁹ unless he does not have the right to occupy the premises or is otherwise unable to fulfil the requirements set out above³⁰.

1 As to the licensing authorities see PARA 3.

2 As to the meaning of 'premises licence' see PARA 460 note 1.

3 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

- 4 le an activity listed in the Gambling Act 2005 s 37(1): see PARA 616.
- 5 As to the meaning of 'casino' see PARA 311.
- 6 As to the meaning of 'providing facilities' for gambling see PARA 309.
- 7 As to the meaning of 'bingo' see PARA 349 note 8.
- 8 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547.
- 9 As to the meaning of 'gaming' see PARA 310.
- 10 As to the meaning of 'betting' see PARA 312.
- 11 As to the meaning of 'accepting a bet' see PARA 312 note 2.
- 12 As to the meaning of 'betting intermediary', and as to when a person acts as a betting intermediary, see PARA 315.
- 13 See the Gambling Act 2005 s 159(1).
- 14 Gambling Act 2005 s 159(2).
- 15 As to the meaning of 'track' see PARA 372 note 8.
- 16 le otherwise than by virtue of the Gambling Act 2005 s 172 (gaming machines: see PARAS 487-489, 491, 502, 509).
- 17 See the Gambling Act 2005 s 159(4).
- 18 As to the meaning of 'operating licence' see PARA 349 note 2.
- 19 As to the meaning of 'authorise' see PARA 349 note 5.
- 20 Gambling Act 2005 s 159(3)(a). Section 159(3), (5) does not apply in relation to an application for a provisional statement (as to which see PARA 474): s 204(4).
- 21 Gambling Act 2005 s 159(3)(b); and see note 20.
- 22 Gambling Act 2005 s 159(5); and see note 20.
- 23 For these purposes, 'prescribed' means, in relation to applications to authorities in England and Wales, prescribed by regulations made by the Secretary of State: s 159(8). As to the Secretary of State see PARA 2. Regulations prescribing a matter for these purposes may, in particular, make different provision for (1) applications in respect of different classes of activity; or (2) different circumstances: s 159(7).
- 24 For the prescribed form of application see the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, regs 3, 11, Sch 1.
- 25 An application, or a notice under the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, Pt 3 (regs 12-15) (see PARA 472), must be made or given in writing: reg 16(1). For these purposes, an application or notice which is sent by facsimile transmission or electronic mail is to be treated as being made or given in writing if it meets the conditions in reg 16(3): reg 16(2). The conditions are that (1) the text of the application or notice is capable of being accessed by the recipient, is legible in all material respects, and is capable of being read and reproduced in written form and used for subsequent reference by the recipient; and (2) the person to whom the application or notice is to be made or given has agreed in advance that an application or notice may be made or given by the particular electronic means used: reg 16(3). Subject to reg 16(5), where an application or notice is sent by facsimile transmission or electronic mail, it is to be treated as having been made or given at the time the conditions specified in reg 16(3)(a) (see head (1) above) are satisfied: reg 16(4). An application is not to be treated as having been made until (a) the prescribed fee (see note 27) has been received by the licensing authority; or (b) where any document required to accompany the application has not been sent by electronic means, or has been sent in a form that does not meet the conditions in reg 16(3), any such document has been received by the licensing authority in hard copy: reg 16(5). For these purposes, 'legible in all material respects' means, in relation to an application or notice sent by electronic means, that the information contained in the application or notice is available to the recipient to no lesser extent than it would be if given by means of a document in written form: reg 16(6)(a). 'The prescribed fee', in relation to an application, means the fee determined in accordance with regulations made under the

Gambling Act 2005 Pt 8 (ss 150-213, Sch 9) (see note 27) which an applicant is required to pay in connection with the making of the application: Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 16(6)(b). Any reference to a document in hard copy is to a written document or a document in the form of a plan: reg 16(6)(c). 'Application', unless the contrary appears, means any of the following: (i) an application under the Gambling Act 2005 s 159 for a premises licence; (ii) an application under s 187 to vary a premises licence (see PARA 520); (iii) an application under s 188 to transfer a premises licence (see PARA 521); (iv) an application under s 195 for the reinstatement of a premises licence (see PARA 526); (v) an application under s 204 for a provisional statement (see PARA 474): Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 2(1).

26 As to the documents to accompany applications for a converted premises licence see the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 5; and as to the meaning of 'converted premises licence' see PARA 463 note 26. Where a person who is applying for a casino premises licence is entitled to apply for a converted casino premises licence in respect of the premises to which the application relates, but does not want the application to be treated as an application for a converted casino premises licence, the application must be accompanied by a written statement confirming that the applicant does not want the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/327, Sch 4 para 54, which provides for the grant of applications for a premises licence made by a person holding the equivalent permission under the previous legislation, to apply: Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 6. As to the meaning of 'casino premises licence' see PARA 460 at head (1); and as to the meaning of 'converted casino premises licence' see PARA 460 note 5.

27 Gambling Act 2005 s 159(6). The amount of the application fee for a conversion application must be determined by the relevant licensing authority but must not exceed (1) in the case of a fast track application, £300; and (2) in the case of a non-fast track application, the amount specified in the Gambling (Premises Licence Fees) (England and Wales) Regulations 2007, SI 2007/479, Schedule, Table col 2 which is opposite the class of premises licence in Schedule, Table col 1 to which the application relates: reg 4(1), (2). 'Conversion application' means an application to which the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/327, Sch 4 para 54 applies; 'fast track application' means an application to which Sch 4 para 57 applies; and 'non-fast track application' means an application to which Sch 4 para 56 applies: see the Gambling (Premises Licence Fees) (England and Wales) Regulations 2007, SI 2007/479, reg 2(1). 'Relevant licensing authority' means, in relation to an application for a premises licence under the Gambling Act 2005 s 159(1) (whether it is a conversion or non-conversion application), or a provisional statement under s 204(1) (see PARA 474), the licensing authority to which the application is made: Gambling (Premises Licence Fees) (England and Wales) Regulations 2007, SI 2007/479, reg 2(1).

The amount of the application fee for a non-conversion application must be determined by the relevant licensing authority but must not exceed (a) in the case of an application in respect of provisional statement premises, the amount specified in Schedule, Table col 3 which is opposite the class of premises licence in Schedule, Table col 1 to which the application relates; and (b) in the case of an application in respect of any other premises, the amount specified in Schedule, Table col 4 which is opposite the class of premises licence in Schedule, Table col 1 to which the application relates: reg 5(1), (2). For these purposes, 'provisional statement premises' means premises in respect of which a licensing authority has issued a provisional statement under the Gambling Act 2005 s 164 (as applied by s 204(2)) (see PARA 474), but does not include any such premises which have been constructed or altered otherwise than in accordance with the plans and information included with the application for the provisional statement in accordance with s 204(3) (see PARA 474): Gambling (Premises Licence Fees) (England and Wales) Regulations 2007, SI 2007/479, reg 5(3). 'Non-conversion application' means an application for a premises licence under the Gambling Act 2005 s 159(1) that is not a conversion application: Gambling (Premises Licence Fees) (England and Wales) Regulations 2007, SI 2007/479, reg 2(1).

As to the different classes of premises licence for these purposes see reg 3(1). In applying regs 4(2)(b), 5(2), and regs 11(2), 12(2), 14(2) and 15(2) (see PARA 472 et seq), the class of premises licence to which an application relates, or the relevant class of premises licence, in the case of an application for a provisional statement, is to be determined as at the date that the application is made: reg 3(2).

28 Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 4(1). For the details which must be shown in the plan see reg 4(2)-(10) (amended by SI 2007/1775).

29 Ie the procedure under the Gambling Act 2005 s 204: see PARA 474.

30 See *R (on the application of Betting Shop Services Ltd) v Southend-on-Sea Borough Council* [2007] EWHC 105 (Admin), [2008] All ER (D) 15 (Jan), where the court held that guidance to the contrary contained in the Gambling Commission's *Guidance to Licensing Authorities* (2nd Edn, June 2007) paras 7.55-7.57 was inconsistent with the true construction of the Gambling Act 2005 ss 159, 204.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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472. Notice of application.

The Secretary of State¹ may make regulations requiring an applicant for a premises licence²:

- 1496 (1) to publish³ notice of his application;
- 1497 (2) to give notice⁴ of his application to the responsible authorities⁵ in relation to the premises⁶;
- 1498 (3) to give notice of his application to other persons⁷.

Such regulations must include provision:

- 1499 (a) about the manner and form in which notice is to be published or given⁸;
- 1500 (b) about the period of time within which notice is to be published or given⁹;
- and
- 1501 (c) for the consequences of failure to comply with the regulations¹⁰.

Where a person who gives notice to a responsible authority¹¹ fails to give proper notice of his application¹² within the prescribed period¹³, the applicant must give notice to the responsible authority in a form and manner which complies with the prescribed requirements¹⁴, other than the requirement as to the period within which the notice is to be given, as soon as practicable after the end of the period referred to above¹⁵. The licensing authority may not grant the application until notice has been so given by the applicant and the period of 28 days beginning on the day on which the responsible authority receives the notice¹⁶ has elapsed, and if it purports to do so any licence issued by the authority is of no effect¹⁷. Subject to that, the licensing authority may disregard any irregularity in relation to the giving of notice¹⁸ to the responsible authority¹⁹.

Similarly, where a person who publishes notice of his application²⁰ fails to publish a proper notice of his application²¹ within the prescribed period²², the applicant must publish notice of the application in a form and manner which complies with the prescribed requirements²³, other than the requirements as to the timing of the publication, as soon as practicable after the end of the period referred to above²⁴. The licensing authority may not grant the application until notice has been so published by the applicant and the period of 28 days beginning on the day on which the notice is published²⁵ has elapsed, and if it purports to do so any licence issued by the authority is of no effect²⁶. Subject to that, the licensing authority may disregard any irregularity in relation to the publication²⁷ of the notice²⁸.

1 As to the Secretary of State see PARA 2.

2 As to the meaning of 'premises licence' see PARA 460 note 1.

3 As to the meaning of 'publish' see PARA 344 note 3.

4 As to the method of giving notice see PARA 356 note 5.

5 For the purposes of the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9), the following are responsible authorities in relation to premises: (1) a licensing authority in England and Wales in whose area the premises are wholly or partly situated; (2) the Gambling Commission; (3) in England and Wales, the chief officer of police

for a police area in which the premises are wholly or partly situated; (4) the fire and rescue authority for an area in which the premises are wholly or partly situated; (5) in England and Wales, the local planning authority, in accordance with the Town and Country Planning Act 1990 Pt I (ss 1-9) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28 et seq), for an area in which the premises are wholly or partly situated; (6) an authority which has functions by virtue of an enactment in respect of minimising or preventing the risk of pollution of the environment or of harm to human health in an area in which the premises are wholly or partly situated; (7) a body which is designated in writing for these purposes, by the licensing authority for an area in which the premises are wholly or partly situated, as competent to advise the authority about the protection of children from harm; (8) the Commissioners for Revenue and Customs; and (9) any other person prescribed for these purposes by regulations made by the Secretary of State: Gambling Act 2005 s 157 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)), omitting references to persons and bodies in Scotland. As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

In relation to a vessel, the following are also responsible authorities for the purposes of the Gambling Act 2005 Pt 8: (a) a navigation authority, within the meaning of the Water Resources Act 1991 s 221(1) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 189), which has functions in relation to any place where the vessel is or is likely to be while activities are carried on in the vessel in reliance on a premises licence; (b) the Environment Agency; (c) the British Waterways Board; and (d) the Secretary of State: Gambling Act 2005 s 211(4). As to the meaning of 'vessel' see PARA 311 note 5; and as to the vessels or parts of vessels in relation to which a premises licence may be issued see PARA 461. As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq; and as to the British Waterways Board see **WATER AND WATERWAYS** vol 101 (2009) PARA 725 et seq.

6 Subject to the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 12(2), a person making an application (other than a fast track application) must give notice of the application to each of the authorities which in accordance with the Gambling Act 2005 s 157 are the responsible authorities in relation to the premises to which the application relates: Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 12(1). Where the application is for the transfer or reinstatement of a premises licence, the applicant must give notice of his application only to the authorities mentioned in the Gambling Act 2005 s 157(a), (b), (c), (h) and (i) (see note 5 heads (1)-(3), (7), (8)): Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 12(2). 'Fast track application' means an application for a premises licence to which the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/327, Sch 4 para 57 (which modifies the Gambling Act 2005 Pt 8 in its application to certain applications for a converted premises licence) applies: Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 12(12).

7 Gambling Act 2005 s 160(1).

8 Gambling Act 2005 s 160(2)(a). Where a person has made an application (1) under s 159 for a premises licence (other than where the application is a fast track application); (2) under s 187 to vary a premises licence (see PARA 520); or (3) under s 204 for a provisional statement (see PARA 474), the applicant must publish notice of his application: (a) in a local newspaper or, if there is none, a local newsletter, circular or similar document, circulating within the licensing authority's area on at least one occasion during the period of ten working days starting with the day after the day on which the application is made to the authority; and (b) by displaying a notice on the premises to which the application relates, in a place at which it can conveniently be read by members of the public from the exterior of the premises and for a period of no less than 28 consecutive days starting on the day on which the application is made to the licensing authority: Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 12(5), (6). In a case where the application is for a provisional statement in respect of premises, and the premises have not been constructed, or the applicant does not have the right to occupy the premises, on the date on which the application is made, head (b) above has effect as if it required the applicant to display the notice at a place which is as near as reasonably practicable to the premises or proposed premises, and where it can conveniently be read by members of the public: reg 12(7), (8). For the prescribed form of notice see reg 12(3), (9), (10), (11), Sch 6. For these purposes, 'the licensing authority' means (i) in relation to an application, the licensing authority to which the application is made; and (ii) in relation to a premises licence or a provisional statement, the licensing authority which issued the licence or statement: reg 2(1). 'Working day' means a day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971: Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 2(1). As to the licensing authorities see PARA 3.

9 Gambling Act 2005 s 160(2)(b). The notice must be given within a period of seven days beginning on the date on which the application is made: Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 12(4).

10 Gambling Act 2005 s 160(2)(b).

11 In the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 12(1): see note 6.

12 For these purposes, a person fails to give proper notice of his application if he fails to give a notice which complies with the requirements of the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, as to the form or manner in which it is to be given: reg 13(2).

13 Ie the period provided for under the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 12(4): see note 9.

14 Ie the requirements of the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459.

15 Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 13(1), (3).

16 Ie the period referred to in the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 13(4): see PARA 473.

17 Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 13(5).

18 See note 11.

19 Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 13(6) (amended by SI 2007/1775).

20 Ie under the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 12(6)(a) or (b): see note 8 heads (a), (b).

21 For these purposes, a person fails to publish a proper notice of his application if the published notice does not comply with the requirements of the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, as to the form or manner in which it is to be published: reg 14(2).

22 See note 20.

23 See note 14.

24 Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 14(1), (3).

25 Ie the period referred to in the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 14(4): see PARA 473.

26 Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 14(5).

27 See note 20.

28 Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 14(6).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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473. Representations by interested parties and responsible authorities.

Where an application is made to a licensing authority¹ for a premises licence², an interested party³ or responsible authority⁴ in relation to the premises⁵ may make representations in writing to the licensing authority⁶. Such representations must be made within such period as the Secretary of State⁷ must prescribe by regulations⁸. Subject to certain exceptions⁹, any such representations must be made within a period of 28 days beginning on the date on which the application was made to the licensing authority¹⁰.

1 As to the licensing authorities see PARA 3.

2 As to the meaning of 'premises licence' see PARA 460 note 1.

3 For these purposes, a person is an interested party in relation to a premises licence or in relation to an application for or in respect of a premises licence if, in the opinion of the licensing authority which issues the licence or to which the application is made, the person (1) lives sufficiently close to the premises to be likely to be affected by the authorised activities; (2) has business interests that might be affected by the authorised activities; or (3) represents persons who satisfy head (1) or head (2) above: Gambling Act 2005 s 158.

4 As to the meaning of 'responsible authority' see PARA 472 note 5.

5 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

6 Gambling Act 2005 s 161(1).

7 As to the Secretary of State see PARA 2.

8 Gambling Act 2005 s 161(2).

9 In a case to which the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 13 applies (see PARA 472 text and notes 11-19), the responsible authority concerned must make any representations under the Gambling Act 2005 s 161 within the period of 28 days beginning on the day on which it receives the notice referred to in the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 13(3) (reg 13(4)); and in a case to which reg 14 applies (see PARA 472 text and notes 20-28), an interested party must make any such representations within the period of 28 days beginning on the day on which the notice referred to in reg 14(3) is published (reg 14(4)).

10 Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 15(1), (2).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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B. APPLICATION FOR PROVISIONAL STATEMENT

474. Making an application for a provisional statement.

A person may make an application for a provisional statement in respect of premises¹ that he expects to be constructed, that he expects to be altered, or that he expects to acquire a right to occupy². An application for a provisional statement must include such plans and other information in relation to the construction, alteration or acquisition as may be prescribed by regulations made by the Secretary of State³ and must be accompanied by the prescribed fee⁴. The provisions of Part 8 of the Gambling Act 2005⁵ apply in relation to an application for a provisional statement as they apply in relation to an application for a premises licence⁶ subject to the above provisions and the provisions as to the effect of a provisional statement⁷ and with any other necessary modifications⁸.

1 As to the meaning of 'premises' see PARA 311 note 5. See also PARA 461.

2 Gambling Act 2005 s 204(1).

3 Gambling Act 2005 ss 204(3), 213(g). As to the Secretary of State see PARA 2. For the prescribed form and content of the application see the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, regs 10(1), 11, Sch 5; and as to the plan see reg 10(2)-(4), which applies reg 4 (as to which see PARA 471 note 28) with modifications.

4 The fee must be determined by the relevant licensing authority (Gambling (Premises Licence Fees) (England and Wales) Regulations 2007, SI 2007/479, reg 15(1)) but must not exceed the amount specified in Schedule, Table col 9 which is opposite the relevant class of premises licence in Schedule, Table col 1 (reg 15(2)). 'The relevant class of premises licence', in relation to an application for a provisional statement in respect of premises, means the class of premises licence to which an application for a licence in respect of the premises would, if made, relate: reg 15(3). As to the prescribed classes of premises licence see reg 3(1). The relevant class of premises licence is to be determined as at the date that the application is made: reg 3(2).

5 Ie the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9): see PARAS 460 et seq, 475 et seq.

6 As to the meaning of 'premises licence' see PARA 460 note 1.

7 Ie the Gambling Act 2005 s 205: see PARA 475.

8 Gambling Act 2005 s 204(2). See also s 204(4), disapplying ss 152(1)(b), 159(3), (5), cited in PARAS 462, 471.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

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475. Form, contents and effect of a provisional statement.

A provisional statement must be in the prescribed form¹, and must, in addition to the information required by statute², contain the following information:

- 1502 (1) the date on which the provisional statement is issued³;
- 1503 (2) the operating licence number⁴ of the relevant operating licence⁵, if such a licence is held by the person to whom the provisional statement is issued⁶; but this does not apply where the provisional statement relates to a track⁷ to be used for accepting bets⁸;
- 1504 (3) the number of the provisional statement, being a number given by the licensing authority to the provisional statement which is unique to that statement⁹; and
- 1505 (4) the name of the licensing authority¹⁰ which issued the provisional statement and the address of its principal office¹¹.

Where a licensing authority issues a provisional statement in respect of premises¹², and an application is made¹³ for a premises licence¹⁴ in respect of the premises, the licensing authority must disregard any representations made in relation to the application for the premises licence unless it thinks that the representations:

- 1506 (a) address matters that could not have been addressed in representations in relation to the application for the provisional statement; or
- 1507 (b) reflect a change in the applicant's circumstances¹⁵.

The licensing authority may refuse the application, or grant it on terms or conditions not included in the provisional statement, only by reference to matters which the authority has considered in reliance on head (a) above, or which, in the authority's opinion, reflect a change in the applicant's circumstances¹⁶. These restrictions do not, however, apply in the case of a provisional statement issued in response to an application in respect of premises that the applicant expects to be constructed or altered¹⁷ if the licensing authority thinks that the premises have been constructed or altered otherwise than in accordance with the plans and information included¹⁸ with the application for the provisional statement¹⁹.

¹ For the prescribed form see the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 26, Sch 11.

² Ie the matters set out in the Gambling Act 2005 s 151(1) (see PARA 463) as applied by s 204(2) (see PARA 474). As to the plan which is to be included by virtue of those provisions see the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 25, which applies reg 4(2)-(9) (cited in PARA 471 note 28) with modifications.

³ Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 24(1)(a).

⁴ As to the meaning of 'operating licence number' see PARA 463 note 21.

- 5 As to the meaning of 'relevant operating licence' see PARA 463 note 22.
- 6 Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 24(1)(b).
- 7 As to the meaning of 'track' see PARA 372 note 8.
- 8 Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 24(2). As to the meaning of 'accepting a bet' see PARA 312 note 2; and as to the meaning of 'bet' see PARA 312.
- 9 Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 24(1)(c).
- 10 As to the licensing authorities see PARA 3.
- 11 Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 24(1)(d).
- 12 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.
- 13 Ie under the Gambling Act 2005 s 159: see PARA 471.
- 14 As to the meaning of 'premises licence' see PARA 460 note 1.
- 15 Gambling Act 2005 s 205(1), (2).
- 16 Gambling Act 2005 s 205(3).
- 17 Ie an application under the Gambling Act 2005 s 204(1)(a) or (b): see PARA 474.
- 18 Ie in accordance with the Gambling Act 2005 s 204(3): see PARA 474.
- 19 Gambling Act 2005 s 205(4).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(iv) Determination of Application

A. REQUIREMENT FOR HEARING

476. Requirement for hearing.

In determining an application for a premises licence¹ a licensing authority² must hold a hearing if:

- 1508 (1) an interested party³ or responsible authority⁴ has made, and not withdrawn, representations⁵ about the application;
- 1509 (2) the authority proposes to attach a condition to the licence in the exercise of its discretionary power to do so⁶; or
- 1510 (3) the authority proposes to exclude⁷ a condition that would otherwise be attached⁸ to the licence⁹.

A licensing authority may, however, determine an application for a premises licence without a hearing despite the above provisions with the consent of the applicant and of any interested party or responsible authority who has made, and not withdrawn, representations¹⁰ about the application¹¹. It may also determine an application for a premises licence without a hearing despite head (1) above if the authority thinks that the representations made¹² are vexatious, are frivolous, or will certainly not influence the authority's determination of the application¹³; and if a licensing authority proposes to determine an application in reliance on that provision, it must as soon as is reasonably practicable notify¹⁴ any person who made¹⁵ representations¹⁶.

1 As to the meaning of 'premises licence' see PARA 460 note 1.

2 As to the licensing authorities see PARA 3.

3 As to the meaning of 'interested party' see PARA 473 note 3.

4 As to the meaning of 'responsible authority' see PARA 472 note 5.

5 Ie under the Gambling Act 2005 s 161: see PARA 473.

6 Ie under the Gambling Act 2005 s 169(1)(a): see PARA 486.

7 Ie under the Gambling Act 2005 s 169(1)(b): see PARA 486.

8 Ie under the Gambling Act 2005 s 168: see PARA 485.

9 See the Gambling Act 2005 s 162(1). As to the procedure at the hearing see PARA 477 et seq. Notice of the hearing must be given to (1) the applicant; and (2) any person who has made (and not withdrawn) representations made in accordance with s 161 (see PARA 473) about the application: see the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 5(1), Schedule, Table col 1. As to the notice of hearing see further PARA 478; and as to the meaning of 'the relevant committee' see PARA 477 note 8.

10 See note 5.

11 Gambling Act 2005 s 162(2).

- 12 See note 5.
- 13 Gambling Act 2005 s 162(3).
- 14 As to the method of notification see PARA 356 note 5.
- 15 See note 5.
- 16 Gambling Act 2005 s 162(4).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(iv) Determination of Application/B. PROCEDURE/477. Procedure; in general.

B. PROCEDURE

477. Procedure; in general.

Despite the fact that the functions of licensing authorities¹ under Part 8 of the Gambling Act 2005² are, in general, delegated to licensing committees or sub-committees established under the Licensing Act 2003³, the procedure for hearings held under Part 8 of the 2005 Act⁴ differs from that for hearings held under the 2003 Act⁵ and different procedural regulations apply⁶. Subject to the provisions of the relevant regulations⁷, it is for the relevant committee⁸ to determine the procedure to be followed in relation to the specified⁹ functions¹⁰.

Where a hearing is required to be held¹¹, the relevant committee must arrange for the hearing to be commenced as soon as is reasonably practicable after the expiry of any prescribed period¹² for representations¹³. In any case where the hearing is to be held on more than one day, the relevant committee must arrange for the hearing to take place on consecutive working days¹⁴. The hearing must take place in public¹⁵; but a relevant committee may direct that all or part of a hearing must be in private if it is satisfied that it is necessary in all the circumstances of the case, having regard to:

- 1511 (1) any unfairness to a party¹⁶ that is likely to result from a hearing in public;
and
- 1512 (2) the need to protect, as far as possible, the commercial or other legitimate interests of a party¹⁷.

Where the parties have notified the relevant committee that they consent to the application being determined without a hearing¹⁸, the relevant committee must, as soon as reasonably practicable, notify¹⁹ all the parties that the hearing has been dispensed with, and determine the application²⁰.

1 As to the licensing authorities see PARA 3.

2 Ie under the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9): see PARAS 460 et seq, 482 et seq.

3 See the Gambling Act 2005 s 154; and PARAS 466-468.

4 As to that procedure see PARA 478 et seq.

5 As to that procedure see PARA 43 et seq.

6 The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, apply to the proceedings of a relevant committee in relation to the exercise of its functions under the following provisions of the Gambling Act 2005: (1) s 162(1), (2) (which makes provision about the circumstances in which a hearing is required to be held in relation to an application: see PARA 476); or (2) s 201(4) (which makes provisions about the circumstances in which a hearing is required to be held in relation to a review: see PARA 530): Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 3(1). The Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44 (see PARA 44 et seq) do not apply to the proceedings of a relevant committee specified in the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises

Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 3(1): reg 3(3). As to the meaning of 'relevant committee' see note 8.

7 Ie subject to the provisions of the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173: see PARA 478 et seq.

8 'Relevant committee' means a licensing committee to which functions are delegated by virtue of the Gambling Act 2005 154(1) (see PARA 466), or a licensing sub-committee empowered to discharge such functions by arrangement under the Licensing Act 2003 s 10(1) (see PARA 468): Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 2(1).

9 Ie the functions specified in the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 3(1): see note 6.

10 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 3(2).

11 Ie under the Gambling Act 2005 s 162(1) (see PARA 476) or s 201(4) (see PARA 530) in relation to a procedure listed in the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, Schedule, Table col 1: reg 4(1). Those procedures are: (1) an application for a premises licence under the Gambling Act 2005 s 159 (see PARA 471); (2) an application to vary a premises licence under s 187 (see PARA 520); (3) an application for a premises licence to be transferred under ss 188, 189 (see PARA 521); (4) an application for a licence to be reinstated under ss 195, 196 (see PARA 526); (5) an application for a provisional statement under s 204 (see PARA 474); and (6) a review of a premises licence under s 201 (see PARA 530): Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, Schedule, Table col 1. As to the meaning of 'premises licence' see PARA 460 note 1.

12 Ie any period prescribed under the Gambling Act 2005 s 161(2) (see PARA 476), s 197(6) (see PARA 527) or s 200(5) (see PARA 529).

13 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 4(1). 'Representations' means representations made in accordance with regulations under the Gambling Act 2005 s 161 (see PARA 473) in relation to an application, or s 197(6) (see PARA 527) or s 200(5) (see PARA 529) in relation to a review; 'application' means an application made under s 159 (see PARA 471), s 187 (see PARA 520), s 188 (see PARA 521), s 195 (see PARA 526), s 197 (see PARA 527) or s 204 (see PARA 474); and 'review' means a review under s 201: Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 2(1).

14 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 4(2). 'Working day' means a day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971: Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 2(1).

15 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 8(1).

16 'Party' means a person to whom a notice of hearing is given in accordance with the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 5(1): reg 2(1).

17 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 8(2).

18 Ie under the Gambling Act 2005 s 162(2) (see PARA 476) or, in the case of a review under s 201, under s 201(4)(a) (see PARA 530).

19 Except where otherwise provided, a requirement under the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, to give a notice (or to notify) is a requirement to give notice in writing; and for

that purpose, a message sent by facsimile transmission or electronic mail must be treated as a notice given in writing: reg 18.

20 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 12. In the case of a review under s 201 (see PARA 530), the relevant committee must determine the review: see reg 12. For these purposes, a reference to a review being determined is a reference to the licensing committee deciding what, if any, action it proposes to take under the Gambling Act 2005 s 202 (see PARA 531) following a review: Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 2(2). As to determination of the application or review see reg 13; and PARA 482.

UPDATE

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(iv) Determination of Application/B. PROCEDURE/478. Notice of hearing.

478. Notice of hearing.

A relevant committee¹ must give notice of any hearing which is required to be held² to each of the relevant persons³. The committee must ensure that that notice:

- 1513 (1) specifies the date on which, the place at which and the time when the hearing is to take place;
- 1514 (2) states that the relevant committee will make available the specified documents⁴ to the following persons if those persons request them:
- 91 144. (a) any person who has made representations⁵, unless the relevant committee considers that the representations are vexatious, frivolous or will certainly not influence the determination of the application; and
- 145. (b) in the case of an application for the transfer of a premises licence⁶, the licensee; and
- 92 1515 (3) is sent so that, in the ordinary course of events, it is received no later than ten working days⁷ before the first day on which the hearing is to be held, as specified in the notice⁸.

The notice of hearing must be accompanied by information in writing explaining the following:

- 1516 (i) the consequences provided for⁹ where a party¹⁰ informs the relevant committee that he does not wish to attend or be represented at the hearing, or fails to inform the relevant committee whether he wishes to attend or be represented at the hearing;
- 1517 (ii) the requirements imposed on the relevant committee in conducting a hearing¹¹;
- 1518 (iii) the consequences provided for¹² where a party has indicated that he wishes to attend or be represented at the hearing, but fails to attend or be represented at the hearing;
- 1519 (iv) the procedure to be followed at the hearing;
- 1520 (v) the time limit and method, if any, by which a party should inform the relevant committee that he wishes to attend or address the hearing;
- 1521 (vi) the time limit and method, if any, by which a party should inform the relevant committee that he wishes to be assisted or represented by another person;
- 1522 (vii) the time limit and method, if any, by which a party should inform the licensing authority¹³ that he will want to call a witness to give evidence at the hearing, and the matters in relation to which he wishes that witness to give evidence;
- 1523 (viii) the time limit and method, if any, by which a party should inform the relevant committee that he wishes to withdraw any representations;
- 1524 (ix) the time limit and method, if any, by which a party should inform the relevant committee that he is willing to consent to the application being determined without a hearing;

1525 (x) the matters, if any, on which the relevant committee considers at the time that it will want clarification at the hearing from a party¹⁴.

Where a hearing is required to be held in relation to a specified procedure¹⁵, a relevant committee must send the specified documents¹⁶ to the following persons:

- 1526 (A) the applicant and, in the case of a review, the licensee; and
- 1527 (B) if requested by him, to a person who has made representations in relation to the application or review, unless the relevant committee considers that the representations are vexatious, frivolous or will certainly not influence the determination of the application, and, in the case of an application for the transfer of a premises licence¹⁷, to the licensee¹⁸.

1 As to the meaning of 'relevant committee' see PARA 477 note 8.

2 Ie in relation to a procedure listed in the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, Schedule, Table col 1. As to those procedures see PARA 477 note 11.

3 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 5(1). As to the method of giving notice see PARA 477 note 19. The 'relevant persons' are the persons listed in the relevant entry in Schedule, Table col 2, ie: (1) the applicant; (2) any person who has made (and not withdrawn) representations about the application or, as the case may be, about the review; and (3) in the case of an application for a premises licence to be transferred under the Gambling Act 2005 ss 188, 189 (see PARA 521) or for a review of a premises licence under s 201 (see PARA 530), the licensee: Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, Schedule, Table col 2. 'Licensee', in relation to a premises licence, means the person to whom the licence is issued: Gambling Act 2005 s 213(e). 'Applicant' means a person who makes an application: Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 2(1). As to the meaning of 'premises licence' see PARA 460 note 1; and as to the meaning of 'application' see PARA 477 note 13.

4 Ie the documents listed in the relevant entry in the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, Schedule, Table col 3. Those documents are copies of the representations made in relation to the application or, as the case may be, the review, unless the relevant committee considers that the representations are vexatious, frivolous or will certainly not influence the determination of the application or the review: see Schedule, Table col 3.

5 As to the meaning of 'representations' see PARA 477 note 13.

6 Ie under the Gambling Act 2005 s 188: see PARA 521.

7 As to the meaning of 'working day' see PARA 477 note 14.

8 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 5(2).

9 Ie under the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 10(1): see PARA 480.

10 As to the meaning of 'party' see PARA 477 note 16.

11 Ie as set out in the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, regs 8, 9 (see PARAS 477, 480).

12 Ie in the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 10(2): see PARA 480.

13 As to the licensing authorities see PARA 3.

14 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 6(1).

15 Is a procedure listed in the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, Schedule, Table col 1. As to those procedures see PARA 477 note 11.

16 See note 4.

17 See note 6.

18 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 6(2).

UPDATE

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(iv) Determination of Application/B. PROCEDURE/479. Power to postpone hearing.

479. Power to postpone hearing.

A relevant committee¹ may at any time either postpone a hearing to a specified date, or arrange for a hearing to be held on a date specified by the committee². The committee may take the actions specified above if it considers it necessary:

- 1528 (1) to enable it to consider any information or documents provided by any party³ in response to a notice sent by the committee⁴ or at the hearing; or
- 1529 (2) having regard to the ability of any party, person representing a party or witness to attend the hearing⁵.

Where a relevant committee has adjourned a hearing to a specified date it must, as soon as reasonably practicable, notify⁶ the parties of the new date, time and place for the hearing⁷; and where it has arranged for the hearing to be held on a specified additional date it must, as soon as reasonably practicable, notify the parties of the additional date, time and place for the hearing⁸.

1 As to the meaning of 'relevant committee' see PARA 477 note 8.

2 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 7(1).

3 As to the meaning of 'party' see PARA 477 note 16.

4 See under the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 6: see PARA 478.

5 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 7(2).

6 As to the method of notification see PARA 477 note 19.

7 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 7(3).

8 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 7(4).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(iv) Determination of Application/B. PROCEDURE/480. Proceedings of a relevant committee in conducting a hearing.

480. Proceedings of a relevant committee in conducting a hearing.

A relevant committee¹ must² permit a party³ to attend a hearing and be assisted or represented by any person whether or not that person is legally qualified⁴. A relevant committee may, however, proceed with a hearing in the absence of a party or a party's representative if the party has:

- 1530 (1) informed the committee that he does not intend to attend or be represented at the hearing, and has not subsequently advised the committee otherwise;
- 1531 (2) failed to inform the committee whether he intends to attend or be represented at the hearing; or
- 1532 (3) left the hearing in circumstances enabling the committee reasonably to conclude that he does not intend to participate further⁵.

If a party has indicated that he does intend to attend or be represented at the hearing, but fails so to attend or to be so represented, the relevant committee may either adjourn the hearing to a specified date if it considers it to be in the public interest, or proceed with the hearing in the party's absence⁶. Where the hearing proceeds in the absence of a party, the relevant committee must consider at the hearing the application or representations⁷ made by that party⁸; and where the relevant committee adjourns the hearing to a specified date it must, as soon as reasonably practicable, notify the parties of the date, time and place to which the hearing has been adjourned⁹.

At the beginning of the hearing the relevant committee must explain the procedure that it proposes to follow in conducting the hearing¹⁰. In conducting a hearing the relevant committee must ensure that each party is given the opportunity to:

- 1533 (a) address the relevant committee on any matter that is relevant to the application or review¹¹, or any representations made on the application or review;
- 1534 (b) call witnesses to give evidence on any matter that is relevant to the application or review, or any representations made on the application or review;
- 1535 (c) provide further information on, or explanation of, any matter on which the relevant committee has indicated¹² that it will want further clarification¹³.

The relevant committee must also:

- 1536 (i) permit any party to question any other party or person representing a party on any matter that is relevant to the application or review, or any representations made on the application or review, where the relevant committee considers that in all the circumstances it is appropriate to do so; and
- 1537 (ii) take into consideration documentary or other information in support of the application or representations produced by a party either before the hearing, or, with the consent of all the other parties attending the hearing, at the hearing¹⁴.

Without prejudice to heads (a) to (c) and heads (i) and (ii) above, a hearing must be conducted so that it takes the form of a discussion led by the relevant committee, and the committee must not permit any cross-examination unless it considers that cross-examination is required for it properly to consider the application or representations made by any party¹⁵.

The relevant committee may require any person attending the hearing who in its opinion is behaving in a disruptive manner, or in breach of conditions specified under this power, to leave the hearing and may either refuse to permit him to return, or permit him to return only on such conditions as the relevant committee may specify¹⁶. Alternatively it may allow such a person to remain at the hearing only on such conditions as the committee may specify¹⁷. Where a person is required to leave the hearing in accordance with this power, the relevant committee must permit him to submit in writing, before the end of the hearing, any information which he would have been entitled to give orally had he not been required to leave, and take into account that information in reaching a determination¹⁸ of the application or review¹⁹.

A relevant committee may²⁰ disregard any irregularity resulting from a failure to comply with a provision of the relevant procedural regulations²¹, or with a procedure otherwise determined by the relevant committee²², where that irregularity comes to its attention prior to it making a determination of the application or review²³. If, however, the relevant committee considers that any person may have been prejudiced by any such irregularity, it must take such steps that it considers necessary to remedy the consequences of the irregularity, before reaching its determination²⁴.

1 As to the meaning of 'relevant committee' see PARA 477 note 8.

2 The subject to the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 8 (see PARA 477) and reg 11 (see the text and notes 16-19).

3 As to the meaning of 'party' see PARA 477 note 16.

4 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 9(1).

5 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 10(1).

6 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 10(2).

7 As to the meanings of 'application' and 'representations' see PARA 477 note 13.

8 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 10(3).

9 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 10(4). As to the method of notification see PARA 477 note 19.

10 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 9(2).

11 As to the meaning of 'review' see PARA 477 note 13.

12 The under the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 6(1)(j): see PARA 478 at head (x).

13 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 9(3).

14 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 9(4).

15 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 9(5).

16 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 11(1).

17 See the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 11(2).

18 As to the meaning of references to the determination of a review see PARA 477 note 20.

19 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 11(3).

20 Ie subject to the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 16(2): see the text and note 24.

21 Ie a provision of the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173: see the text and notes 1-19; and PARAS 477-479.

22 Ie in accordance with the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 3(2): see PARA 477.

23 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 16(1).

24 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 16(2).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(iv) Determination of Application/B. PROCEDURE/481. Record of proceedings.

481. Record of proceedings.

The relevant committee¹ must ensure that a record of the hearing is taken in a permanent and intelligible form². It must ensure that any such record is kept for a period of six years from the date that the application³ or review⁴ is finally determined⁵, including, in either case, any appeal⁶ or judicial review⁷.

A relevant committee may correct clerical mistakes in any document recording a determination⁸ of the committee, or errors arising in such a document from an accidental slip or omission⁹.

1 As to the meaning of 'relevant committee' see PARA 477 note 8.

2 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 15(1).

3 As to the meaning of 'application' see PARA 477 note 13.

4 As to the meaning of 'review' see PARA 477 note 13.

5 As to the meaning of references to the determination of a review see PARA 477 note 20.

6 As to appeals see PARAS 532-533.

7 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 15(2).

8 As to the committee's determination see PARA 482.

9 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 17.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(iv) Determination of Application/C. DETERMINATION OF THE APPLICATION/482. Determination of the application.

C. DETERMINATION OF THE APPLICATION

482. Determination of the application.

On considering an application for a premises licence¹, whether at a hearing or not², a licensing authority³ must either grant it or reject it⁴. A licensing authority must not, however, determine an application for a premises licence made in reliance on an application for an operating licence⁵ which has not yet been determined⁶, until the relevant operating licence has been issued in a form which authorises⁷ the applicant to carry on the activity in respect of which the premises licence is sought⁸.

Following a hearing⁹, a relevant committee¹⁰ must determine the application or review¹¹ before the end of the period of five working days¹² starting with the day after the last day of the hearing¹³. A relevant committee may, however, extend that time limit for a specified period where it considers an extension to be in the public interest¹⁴. Where it has so extended the time limit, the relevant committee must, as soon as reasonably practicable, give a notice¹⁵ of the extension to the parties stating the period of the extension and the reasons for it¹⁶.

1 As to the meaning of 'premises licence' see PARA 460 note 1.

2 As to the requirement for a hearing see PARA 476; and as to the procedure see PARAS 477-481.

3 As to the licensing authorities see PARA 3; and as to the delegation of their functions to licensing committees and sub-committees see PARAS 466-468.

4 Gambling Act 2005 s 163(1).

5 As to the meaning of 'operating licence' see PARA 349 note 2.

6 Ie an application made in reliance on the Gambling Act 2005 s 159(3)(b): see PARA 471.

7 As to the meaning of 'authorise' see PARA 349 note 5.

8 Gambling Act 2005 s 163(2). In relation to an application by the Tote for a betting premises licence, s 163(2) is omitted: Gambling Act 2005 (Horserace Totalisator Board) Order 2007, SI 2007/2102, art 4. 'The Tote' means the Horserace Totalisator Board: art 2(2). As to the Tote and its prospective dissolution see PARA 9. As to the meaning of 'betting premises licence' see PARA 460 at head (5).

9 Ie a hearing under the Gambling Act 2005 s 162(1) (see PARA 476) or s 201(4) (see PARA 530).

10 As to the meaning of 'relevant committee' see PARA 477 note 8.

11 As to the meanings of 'application' and 'review' see PARA 477 note 13; and as to the meaning of references to a review being determined see PARA 477 note 20.

12 As to the meaning of 'working day' see PARA 477 note 14.

13 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 13.

14 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 14(1).

15 As to the method of giving notice see PARA 477 note 19.

16 Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 14(2).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(iv) Determination of Application/C. DETERMINATION OF THE APPLICATION/483. Notification of grant or rejection of application.

483. Notification of grant or rejection of application.

Where a licensing authority¹ grants an application for a premises licence² it must, as soon as is reasonably practicable, give notice³ of the grant to:

- 1538 (1) the applicant;
- 1539 (2) the Gambling Commission⁴;
- 1540 (3) any person who made representations⁵ about the application;
- 1541 (4) in England and Wales, the chief officer of police for any area⁶ in which the premises⁷ are wholly or partly situated; and
- 1542 (5) the Commissioners for Revenue and Customs⁸.

Such a notice:

- 1543 (a) must be in the prescribed form⁹;
- 1544 (b) if the licensing authority has attached a condition to the licence under its discretionary power to do so¹⁰ or has excluded¹¹ a condition that would otherwise have attached¹², must give the authority's reasons; and
- 1545 (c) if representations were made about the application¹³, must give the authority's response to the representations¹⁴.

The authority must also issue a premises licence to the applicant¹⁵ and must give the applicant a summary of the terms and conditions of the licence in the prescribed form¹⁶.

Where a licensing authority rejects an application for a premises licence it must, as soon as is reasonably practicable, give notice of the rejection to the persons mentioned in heads (1) to (5) above¹⁷. Such a notice must be in the prescribed form¹⁸ and must give the authority's reasons for rejecting the application¹⁹.

1 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

2 As to the meaning of 'premises licence' see PARA 460 note 1.

3 As to the method of giving notice see PARA 356 note 5.

4 As to the Gambling Commission see PARA 4.

5 Ie under the Gambling Act 2005 s 161: see PARA 473.

6 For these purposes, 'chief officer of police' has the meaning given by the Police Act 1996 s 101(1), and a reference to a chief officer's area is a reference to the area in respect of which he has responsibility under that Act: Gambling Act 2005 s 213(b), (c). As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

7 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

8 Gambling Act 2005 s 164(1)(a) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

9 For these purposes, 'prescribed' means, in relation to authorities in England and Wales, prescribed by regulations made by the Secretary of State: Gambling Act 2005 ss 164(3)(a), 165(3)(a). As to the Secretary of State see PARA 2. For the prescribed form of notice see the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, regs 17, 19, Sch 7.

10 Ie under the Gambling Act 2005 s 169(1)(a): see PARA 486.

11 Ie under the Gambling Act 2005 s 169(1)(b): see PARA 486.

12 Ie by virtue of the Gambling Act 2005 s 168: see PARA 485.

13 Ie under the Gambling Act 2005 s 161: see PARA 473.

14 Gambling Act 2005 s 164(2).

15 Gambling Act 2005 s 164(1)(b).

16 Gambling Act 2005 s 164(1)(c). For the prescribed form of summary see the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, reg 23, Sch 10.

17 See the Gambling Act 2005 s 165(1).

18 For the prescribed form of notice see the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, regs 18, 19, Sch 8.

19 Gambling Act 2005 s 165(2).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(v) Conditions attached to Premises Licences; In general/484. Mandatory conditions; in general.

(v) Conditions attached to Premises Licences; In general

484. Mandatory conditions; in general.

The Secretary of State¹ may by regulations provide for a specified condition to be attached to premises licences². Such regulations may, in particular:

- 1546 (1) make provision which applies generally, only to premises licences in a specified class or only in specified circumstances³; and
- 1547 (2) make different provision for different classes of licence or for different circumstances⁴.

The following mandatory conditions must be attached to every premises licence⁵:

- 1548 (a) the summary of the terms and conditions of the premises licence issued⁶ must be displayed in a prominent place within the premises⁷;
- 1549 (b) the layout of the premises must be maintained in accordance with the plan⁸;
- 1550 (c) the premises must not be used for the sale of tickets⁹ in a private lottery¹⁰ or customer lottery¹¹ or the sale of tickets in any other lottery in respect of which the sale of tickets on the premises is otherwise prohibited¹².

The prescribed mandatory conditions which must be attached to casino premises licences¹³, bingo premises licences¹⁴, adult gaming centre premises licences¹⁵, family entertainment centre premises licences¹⁶, betting premises licences¹⁷ (other than track premises licences¹⁸) and track premises licences are discussed below¹⁹.

A premises licence must, additionally, be subject to the condition that the premises are not to be used to provide facilities for gambling²⁰ on Christmas Day²¹.

1 As to the Secretary of State see PARA 2.

2 Gambling Act 2005 s 167(1). As to the meaning of 'premises licence' see PARA 460 note 1.

3 Gambling Act 2005 s 167(2)(a).

4 Gambling Act 2005 s 167(2)(b).

5 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 3(1).

6 I.e. the summary issued under the Gambling Act 2005 s 164(1)(c): see PARA 483.

7 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 3(2). As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

8 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 3(3).

9 A reference to the sale or supply of a lottery ticket by a person includes a reference to a person doing anything as a result of which another person becomes a member of the class among whom prizes in a lottery are to be allocated: Gambling Act 2005 ss 253(2), 353(2)(k). As to the meaning of 'lottery ticket' see PARA 377 note 8; as to the meaning of 'lottery' see PARA 317; and as to the meaning of 'prize' in relation to a lottery see PARA 317 note 4.

10 For these purposes, a 'private lottery' means a private society lottery or a work lottery within the meaning of the Gambling Act 2005 Sch 11 paras 10, 11 (see PARA 660): Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 3(5)(a).

11 For these purposes, a 'customer lottery' has the same meaning as in the Gambling Act 2005 Sch 11 Pt 3 (paras 20-29) (see PARA 661): Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 3(5)(b).

12 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 3(4).

13 As to the meaning of 'casino premises licence' see PARA 460 at head (1).

14 As to the meaning of 'bingo premises licence' see PARA 460 at head (2).

15 As to the meaning of 'adult gaming centre premises licence' see PARA 460 at head (3).

16 As to the meaning of 'family entertainment centre premises licence' see PARA 460 at head (4).

17 As to the meaning of 'betting premises licence' see PARA 460 at head (5).

18 'Track premises licence' means a betting premises licence in respect of a track: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 2. As to the meaning of 'track' see PARA 372 note 8.

19 See PARAS 490, 492, 495, 499, 503, 510-514.

20 As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

21 Gambling Act 2005 s 183.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(v) Conditions attached to Premises Licences; In general/485. Default conditions; in general.

485. Default conditions; in general.

The Secretary of State¹ may by regulations prescribe for a specified condition to be attached to any premises licence² unless excluded by the licensing authority³ which issues the licence⁴. Such regulations may, in particular:

- 1551 (1) make provision which applies generally, only to premises licences in a specified class or only in specified circumstances⁵; and
- 1552 (2) make different provision for different classes of licence or for different circumstances⁶.

The prescribed default conditions attaching to casino premises licences⁷, bingo premises licences⁸, betting premises licences⁹ (other than track premises licences¹⁰) and track premises licences are discussed below¹¹.

1 As to the Secretary of State see PARA 2.

2 As to the meaning of 'premises licence' see PARA 460 note 1.

3 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

4 Gambling Act 2005 s 168(1).

5 Gambling Act 2005 s 168(2)(a).

6 Gambling Act 2005 s 168(2)(b).

7 As to the meaning of 'casino premises licence' see PARA 460 at head (1).

8 As to the meaning of 'bingo premises licence' see PARA 460 at head (2).

9 As to the meaning of 'betting premises licence' see PARA 460 at head (5).

10 As to the meaning of 'track premises licence' see PARA 484 note 18.

11 See PARAS 496, 500, 504, 515.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(v) Conditions attached to Premises Licences; In general/486. Conditions imposed or excluded by licensing authority.

486. Conditions imposed or excluded by licensing authority.

Where a licensing authority¹ issues a premises licence² it may attach a condition to the licence³ which may:

- 1553 (1) apply in relation to the premises⁴ generally or only in relation to a specified part of the premises⁵;
- 1554 (2) in particular, address a matter addressed by a default condition⁶ that has been excluded⁷.

A licensing authority may not, however, attach a condition to a premises licence which prevents compliance with a condition of the operating licence⁸ which authorises⁹ the holder¹⁰ to carry out the activity in respect of which the premises licence is granted¹¹.

A licensing authority may also exclude a default condition that would otherwise be attached¹² to the licence¹³.

1 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

2 As to the meaning of 'premises licence' see PARA 460 note 1.

3 Gambling Act 2005 s 169(1)(a). A premises licence in relation to a vessel may include a condition imposed by virtue of s 169 about the location of the vessel: s 211(2). As to the meaning of 'vessel' see PARA 311 note 5; and as to the vessels or parts of vessels in relation to which a premises licence may be issued see PARA 461.

4 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

5 Gambling Act 2005 s 169(3).

6 Ie a condition excluded under the Gambling Act 2005 s 169(1)(b): see the text and notes 12-13.

7 See the Gambling Act 2005 s 169(2).

8 As to the meaning of 'operating licence' see PARA 349 note 2.

9 As to the meaning of 'authorise' see PARA 349 note 5.

10 As to the meaning of 'holder' in relation to an operating licence see PARA 350 note 5. In relation to a premises licence, 'holder' means the person to whom the licence is issued: Gambling Act 2005 s 213(d).

11 Gambling Act 2005 s 169(4).

12 Ie by virtue of the Gambling Act 2005 s 168: see PARA 485.

13 See the Gambling Act 2005 s 169(1)(b).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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487. Prohibited conditions.

A premises licence¹ may not be subject to a condition²:

- 1555 (1) requiring all or part of the premises³, or any activity taking place on the premises, to be operated or carried on as a club or other body with membership; or
- 1556 (2) restricting use of any part of the premises wholly or partly by reference to membership of a club or other body⁴.

Nor may a premises licence be subject to a condition⁵ imposing limits on stakes⁶, fees, winnings⁷ or prizes⁸; but this prohibition does not prevent the imposition⁹ of a condition about fees for admission to a track¹⁰.

A premises licence may not, whether by way of condition or otherwise:

- 1557 (a) make provision about the number or categories of gaming machine¹¹ that may be made available for use that contradicts a specified statutory provision¹²;
- 1558 (b) make provision that contradicts a provision of regulations defining classes of gaming machine¹³, controlling the circumstances in which a gaming machine is made available for use¹⁴ or regulating the supply, installation, adaptation, maintenance or repair of gaming machines¹⁵; or
- 1559 (c) make provision of a kind prohibited by regulations under any of the specified¹⁶ statutory provisions¹⁷.

1 As to the meaning of 'premises licence' see PARA 460 note 1.

2 Ie whether imposed by virtue of the Gambling Act 2005 s 167, s 168 or s 169: see PARAS 484-486.

3 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

4 Gambling Act 2005 s 170.

5 See note 2.

6 As to the meaning of 'stake' see PARA 312 note 6.

7 As to the meaning of 'winnings' see PARA 312 note 6.

8 Gambling Act 2005 s 171(1). As to the meaning of 'prize' see PARAS 310 note 2, 317 note 4.

9 Ie by virtue of the Gambling Act 2005 s 167: see PARA 484.

10 Gambling Act 2005 s 171(2). As to the meaning of 'track' see PARA 372 note 8.

11 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547.

12 Ie that contradicts a provision of the Gambling Act 2005 s 172: see PARAS 487-489, 491, 502, 509.

13 Ie regulations under the Gambling Act 2005 s 236: see PARAS 548-552.

14 Ie regulations under the Gambling Act 2005 s 240: see PARA 553.

15 le regulations under the Gambling Act 2005 s 241: see PARA 560.

16 le regulations under the Gambling Act 2005 ss 172, 236, 240 or 241: see PARAS 487-489, 491, 502, 509; 548-553, 560.

17 Gambling Act 2005 s 172(10).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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488. Condition for door supervision.

Where a condition for door supervision¹ is attached² to a premises licence³, then if the person guarding the premises against unauthorised access or occupation, against outbreaks of disorder or against damage⁴ is required by the Private Security Industry Act 2001⁵ to hold a licence under that Act authorising the guarding, the requirement under that Act is to be treated for the purposes of the Gambling Act 2005 as if it were a condition of the premises licence attached by virtue of this provision⁶.

1 For these purposes, 'condition for door supervision' means a condition requiring that one or more persons be responsible for guarding the premises against unauthorised access or occupation, against outbreaks of disorder or against damage: Gambling Act 2005 s 178(2). As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

2 Ie whether by virtue of the Gambling Act 2005 s 167, s 168 or s 169: see PARAS 484-486.

3 As to the meaning of 'premises licence' see PARA 460 note 1.

4 Ie the person carrying out the guarding mentioned in the Gambling Act 2005 s 178(2): see note 1.

5 As to the Private Security Industry Act 2001 see **TRADE AND INDUSTRY** vol 97 (2010) PARA 887 et seq.

6 Gambling Act 2005 s 178(1), (3).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(vi) Specific Cases/A. ADULT GAMING CENTRE PREMISES LICENCES/489. Gaming machines.

(vi) Specific Cases

A. ADULT GAMING CENTRE PREMISES LICENCES

489. Gaming machines.

An adult gaming centre premises licence¹ must authorise² the holder³:

- 1560 (1) to make up to four Category B gaming machines⁴ available for use on the premises⁵;
- 1561 (2) to make any number of Category C gaming machines available for use on the premises⁶; and
- 1562 (3) to make any number of Category D gaming machines available for use on the premises⁷.

1 As to the meaning of 'adult gaming centre premises licence' see PARA 460 at head (3).

2 As to the meaning of 'authorise' see PARA 349 note 5.

3 As to the meaning of 'holder' see PARA 486 note 10.

4 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547; as to categories of gaming machine generally see PARA 548; and as to the meaning of 'Category B gaming machine' see PARA 550. For this purpose, a reference to a Category B gaming machine is to be treated as referring to sub-categories B3 or B4 (see PARA 550 at heads (3), (5)): Categories of Gaming Machine Regulations 2007, SI 2007/2158, reg 6(3)(a).

5 Gambling Act 2005 s 172(1)(a). See also s 172(10); and PARA 487 text and notes 11-17. The Secretary of State may by order amend a provision of s 172 so as to vary (1) the number of machines authorised by a specified kind of premises licence; (2) the category of machines authorised by a specified kind of premises licence: s 172(11). As to the Secretary of State see PARA 2. At the date at which this volume states the law, no such order had been made.

6 Gambling Act 2005 s 172(1)(b). As to the meaning of 'Category C gaming machine' see PARA 551.

7 Gambling Act 2005 s 172(1)(c). As to the meaning of 'Category D gaming machine' see PARA 552.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(vi) Specific Cases/A. ADULT GAMING CENTRE PREMISES LICENCES/490. Mandatory conditions.

490. Mandatory conditions.

The following conditions must be attached to adult gaming centre premises licences¹:

- 1563 (1) a notice stating that no person under the age of 18 years is permitted to enter the premises² must be displayed in a prominent place at every entrance to the premises³;
- 1564 (2) no customer must be able to access the premises directly from any other premises in respect of which a premises licence⁴, or a family entertainment centre gaming machine permit⁵, club gaming permit or club machine permit⁶ or licensed premises gaming machine permit⁷ has effect⁸;
- 1565 (3) any ATM⁹ made available for use on the premises must be located in a place that requires any customer who wishes to use it to cease gambling¹⁰ at any gaming machine¹¹ in order to do so¹²;
- 1566 (4) no alcohol¹³ must be permitted to be consumed on the premises at any time during which facilities for gambling are being provided¹⁴ on the premises¹⁵; and a notice stating that condition must be displayed in a prominent place at every entrance to the premises¹⁶.

1 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 12. As to the meaning of 'adult gaming centre premises licence' see PARA 460 at head (3).

2 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

3 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 3 para 1.

4 Ie a licence issued under the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9): see PARAS 460 et seq, 491 et seq. As to the meaning of 'premises licence' see PARA 460 note 1.

5 Ie a permit issued under the Gambling Act 2005 Sch 10: see PARA 562.

6 Ie a permit issued under the Gambling Act 2005 Sch 12: see PARA 582.

7 Ie a permit issued under the Gambling Act 2005 Sch 13: see PARA 570.

8 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 3 para 2.

9 'ATM' means a machine located on the premises which enables a person using it to obtain cash on credit: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 2.

10 As to the meaning of 'gambling' see PARA 308.

11 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547.

12 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 3 para 3.

13 As to the meaning of 'alcohol' see PARA 30 (definition applied by the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 2).

14 As to the meaning of 'providing facilities' for gambling see PARA 309.

15 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 3 para 4(1).

16 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 3 para 4(2).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(vi) Specific Cases/B. FAMILY ENTERTAINMENT CENTRE PREMISES LICENCES/491. Gaming machines.

B. FAMILY ENTERTAINMENT CENTRE PREMISES LICENCES

491. Gaming machines.

A family entertainment centre premises licence¹ must authorise² the holder³:

- 1567 (1) to make any number of Category C gaming machines⁴ available for use on the premises⁵; and
- 1568 (2) to make any number of Category D gaming machines⁶ available for use on the premises⁷.

1 As to the meaning of 'family entertainment centre premises licence' see PARA 460 at head (4).

2 As to the meaning of 'authorise' see PARA 349 note 5.

3 As to the meaning of 'holder' see PARA 486 note 10.

4 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547; as to categories of gaming machine generally see PARA 548; and as to the meaning of 'Category C gaming machine' see PARA 551.

5 Gambling Act 2005 s 172(2)(a). See also s 172(10); and PARA 487 text and notes 11-17; s 172(11); and PARA 489 note 5.

6 As to the meaning of 'Category D gaming machine' see PARA 552.

7 Gambling Act 2005 s 172(2)(b); and see note 5.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(vi) Specific Cases/B. FAMILY ENTERTAINMENT CENTRE PREMISES LICENCES/492. Mandatory conditions.

492. Mandatory conditions.

The following conditions must be attached to family entertainment centre premises licences¹:

1569 (1) no customer must be able to access the premises² directly from any other premises in respect of which one of the following premises licences³ has effect, namely:

93

146. (a) a casino premises licence⁴;

147. (b) an adult gaming centre premises licence⁵;

148. (c) a betting premises licence⁶ other than a track premises licence⁷;

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1570 (2) any ATM⁸ made available for use on the premises must be located in a place that requires any customer who wishes to use it to cease gambling⁹ at any gaming machine¹⁰ in order to do so¹¹;

1571 (3) where Category C gaming machines¹² are made available for use on the premises, any area of the premises in which those machines are located:

95

149. (a) must be separated from the rest of the premises by a physical barrier which is effective to prevent access other than by an entrance designed for the purpose;

150. (b) must be supervised¹³ at all times to ensure children¹⁴ or young persons¹⁵ or both do not enter the area; and

151. (c) must be arranged in such a way so as to permit all parts of the area to be observed by the persons with responsibilities¹⁶ for supervision¹⁷;

96

1572 and a notice stating that no person under the age of 18 years is permitted to enter the area must be displayed in a prominent place at the entrance to any area of the premises in which Category C gaming machines are made available for use¹⁸;

1573 (4) no alcohol¹⁹ must be permitted to be consumed on the premises at any time during which facilities for gambling are being provided²⁰ on the premises²¹; and a notice stating this condition must be displayed in a prominent place at every entrance to the premises²².

1 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 13. As to the meaning of 'family entertainment centre premises licence' see PARA 460 at head (4).

2 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

3 As to the meaning of 'premises licence' see PARA 460 note 1.

4 As to the meaning of 'casino premises licence' see PARA 460 at head (1).

5 As to the meaning of 'adult gaming centre premises licence' see PARA 460 at head (3).

6 As to the meaning of 'betting premises licence' see PARA 460 at head (5).

7 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 4 para 1. As to the meaning of 'track premises licence' see PARA 484 note 18.

8 As to the meaning of 'ATM' see PARA 490 note 9.

9 As to the meaning of 'gambling' see PARA 308.

10 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547.

11 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 4 para 2.

12 As to categories of gaming machine generally see PARA 548; and as to the meaning of 'Category C gaming machine' see PARA 551.

13 The reference to supervision in the text is a reference to supervision by (1) one or more persons whose responsibilities include ensuring children or young persons or both do not enter the area; or (2) closed circuit television which is monitored by one or more persons whose responsibilities include ensuring that children or young persons or both do not enter the area: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 4 para 3(2).

14 As to the meaning of 'child' see PARA 331 note 2.

15 As to the meaning of 'young person' see PARA 353 note 5.

16 le the persons mentioned in the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 4 para 3(2): see note 13.

17 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 4 para 3(1).

18 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 4 para 3(3).

19 As to the meaning of 'alcohol' see PARA 30 (definition applied by the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 2).

20 As to the meaning of 'providing facilities' for gambling see PARA 309.

21 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 4 para 4(1).

22 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 4 para 4(2).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(vi) Specific Cases/C. BETTING PREMISES LICENCES/(A) In general/493. Gaming machines, betting machines and virtual gaming.

C. BETTING PREMISES LICENCES

(A) IN GENERAL

493. Gaming machines, betting machines and virtual gaming.

A betting premises licence¹ must authorise² the holder³ to make up to four gaming machines⁴, each of which must be of Category B, C or D⁵, available for use⁶; but this applies to a betting premises licence in respect of a track⁷ only if the holder also holds a pool betting operating licence⁸.

A betting premises licence must also authorise the holder to make facilities available⁹ for betting¹⁰ on the outcome of a virtual game, race, competition or other event or process¹¹.

A condition¹² of a betting premises licence may relate to:

- 1574 (1) the number of machines¹³ used on the premises¹⁴ for the purpose of making or accepting bets¹⁵;
- 1575 (2) the nature of those machines;
- 1576 (3) the circumstances in which those machines are made available for use¹⁶.

1 As to the meaning of 'betting premises licence' see PARA 460 at head (5).

2 As to the meaning of 'authorise' see PARA 349 note 5.

3 As to the meaning of 'holder' see PARA 486 note 10.

4 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547.

5 As to categories of gaming machine generally see PARA 548; as to the meaning of 'Category B gaming machine' see PARA 550; as to the meaning of 'Category C gaming machine' see PARA 551; and as to the meaning of 'Category D gaming machine' see PARA 552. For this purpose, a reference to a Category B gaming machine is to be treated as referring to sub-categories B2, B3 or B4 (see PARA 550 at heads (2), (3), (5)): Categories of Gaming Machine Regulations 2007, SI 2007/2158, reg 6(3)(d).

6 Gambling Act 2005 s 172(8). See also s 172(10) (see PARA 487 text and notes 11-17); and s 172(11) (see PARA 489 note 5).

7 As to the meaning of 'track' see PARA 372 note 8.

8 Gambling Act 2005 s 172(9). As to the meaning of 'pool betting operating licence' see PARA 349 at head (4).

9 As to the meaning of 'providing facilities' for gambling see PARA 309.

10 As to the meaning of 'betting' see PARA 312.

11 Gambling Act 2005 s 173(1), (2)(b). As to the meaning of 'virtual game, race, competition or other event or process' see PARA 350 note 8.

12 For these purposes, 'condition' means a condition imposed by virtue of the Gambling Act 2005 s 167, s 168 or s 169 (see PARA 484-486): s 181(3).

13 In the Gambling Act 2005, a reference to a machine is a reference to any apparatus which uses or applies mechanical power, electrical power or both: ss 235(3)(a), 353(1).

14 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

15 As to the meaning of 'accepting a bet' see PARA 312 note 2.

16 Gambling Act 2005 s 181(1).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(vi) Specific Cases/C. BETTING PREMISES LICENCES/(A) In general/494. Pool betting on dog races.

494. Pool betting on dog races.

A betting premises licence¹ in respect of premises² other than a dog track³ must be subject to the condition that pool bets⁴ may not be accepted⁵ in reliance on the licence in respect of dog racing other than in accordance with arrangements made with the occupier of the dog track on which the racing takes place⁶.

The Secretary of State⁷ may by order repeal this provision⁸; and a repeal by such an order will cause the condition so attached to premises licences in force on the date of the repeal to lapse in respect of anything done on or after the date of the repeal⁹. Unless previously repealed, these provisions are to cease to have effect at the end of 31 December 2012 and the condition attached by them to premises licences in force on that date will lapse in respect of anything done after that date¹⁰.

1 As to the meaning of 'betting premises licence' see PARA 460 at head (5).

2 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

3 As to the meaning of 'dog track' see PARA 372 note 8.

4 As to the meaning of 'pool betting' see PARA 313.

5 As to the meaning of 'accepting a bet' see PARA 312 note 2.

6 Gambling Act 2005 s 180(1).

7 As to the Secretary of State see PARA 2.

8 Gambling Act 2005 s 180(2).

9 Gambling Act 2005 s 180(3).

10 See the Gambling Act 2005 s 180(4).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(vi) Specific Cases/C. BETTING PREMISES LICENCES/(B) Betting Premises Licences other than Track Premises Licences/495. Mandatory conditions attaching to betting premises licences other than track premises licences.

(B) BETTING PREMISES LICENCES OTHER THAN TRACK PREMISES LICENCES

495. Mandatory conditions attaching to betting premises licences other than track premises licences.

The following conditions must be attached to betting premises licences¹ other than track premises licences²:

- 1577 (1) a notice stating that no person under the age of 18 years is permitted to enter the premises³ must be displayed in a prominent place at every entrance to the premises⁴;
- 1578 (2) access to the premises must be from a street⁵ or from other premises with a betting premises licence⁶; but with prejudice to this condition, there must be no means of direct access between the premises and other premises used for the retail sale of merchandise or services⁷;
- 1579 (3) subject to anything permitted by virtue of the Gambling Act 2005, or done in accordance with heads (4) to (7) below, the premises must not be used for any purpose other than for providing facilities⁸ for betting⁹;
- 1580 (4) any ATM¹⁰ made available for use on the premises must be located in a place that requires any customer who wishes to use it to leave any gaming machine¹¹ or betting machine¹² in order to do so¹³;
- 1581 (5) no apparatus for making information or other material available in the form of sounds or visual images may be used on the premises, except for apparatus used for the following purposes:
 - 97 152. (a) communicating information about, or coverage of, sporting events, including information relating to betting on such an event and any other matter or information, including an advertisement, which is incidental to such an event;
 - 153. (b) communicating information relating to betting on any event, including the result of the event, in connection with which betting transactions may be or have been effected on the premises¹⁴;
- 98 1582 (6) no publications, other than racing periodicals or specialist betting publications, may be sold or offered for sale on the premises¹⁵;
- 1583 (7) no music, dancing or other entertainment must be provided or permitted on the premises, save for entertainment provided in accordance with head (5) above¹⁶;
- 1584 (8) no alcohol¹⁷ must be permitted to be consumed on the premises at any time during which facilities for gambling¹⁸ are being provided on the premises¹⁹; and a notice stating this condition must be displayed in a prominent place at every entrance to the premises²⁰;
- 1585 (9) a notice setting out the terms on which customers are invited to bet on the premises must be displayed in a prominent place on the premises to which customers have unrestricted access²¹.

- 1 As to the meaning of 'betting premises licence' see PARA 460 at head (5).
- 2 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 14. As to the meaning of 'track premises licence' see PARA 484 note 18.
- 3 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.
- 4 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 5 Pt 1 para 1.
- 5 'Street' includes any bridge, road, lane, footway, subway, square, court, alley or passage (including passages through enclosed premises such as shopping malls), whether a thoroughfare or not: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 2.
- 6 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 5 Pt 1 para 2(1).
- 7 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 5 Pt 1 para 2(2).
- 8 As to the meaning of 'providing facilities' for gambling see PARA 309.
- 9 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 5 Pt 1 para 3. As to the meaning of 'betting' see PARA 312.
- 10 As to the meaning of 'ATM' see PARA 490 note 9.
- 11 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547.
- 12 For these purposes, 'betting machine' means a wholly automated machine designed or adapted only for use to bet on future real events, including (1) a machine that enables the customer to access an account on an internet website by means of which he is able to place a bet and receive winnings; and (2) a machine which accepts bets made by the customer and issues a record of the betting transaction which enables the customer to claim his winnings from an individual on the betting premises, or from the machine: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 2. 'Real', in relation to a game, event or process means non-virtual: Gambling Act 2005 s 353(1). As to the meaning of 'virtual' game, event or process see PARA 350 note 8.
- 13 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 5 Pt 1 para 4.
- 14 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 5 Pt 1 para 5.
- 15 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 5 Pt 1 para 6.
- 16 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 5 Pt 1 para 7.
- 17 As to the meaning of 'alcohol' see PARA 30 (definition applied by the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 2).
- 18 As to the meaning of 'gambling' see PARA 308.
- 19 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 5 Pt 1 para 8(1).
- 20 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 5 Pt 1 para 8(2).
- 21 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 5 Pt 1 para 9.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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496. Default condition attaching to betting premises licences other than track premises licences.

The following condition must be attached to betting premises licences¹ other than track premises licences² unless excluded by the licensing authority³ which issues the licence, in exercise of its statutory powers⁴ to do so⁵, namely that no facilities for gambling must be provided⁶ on the premises⁷ between the hours of 10 pm on one day and 7 am on the next day⁸.

1 As to the meaning of 'betting premises licence' see PARA 460 at head (5).

2 As to the meaning of 'track premises licence' see PARA 484 note 18.

3 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

4 As to its powers under the Gambling Act 2005 s 169(1)(b): see PARA 486.

5 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 15.

6 As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

7 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

8 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 5 Pt 2.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(vi) Specific Cases/C. BETTING PREMISES LICENCES/(C) Track Premises Licences/497. Pool betting on track.

(C) TRACK PREMISES LICENCES

497. Pool betting on track.

A betting premises licence¹ in respect of a track² may not authorise the acceptance of bets³ by way of pool betting⁴ except in a case to which the following description applies⁵, namely the acceptance of bets, by way of pool betting on horse racing⁶ or dog racing by the holder⁷ of the betting premises licence, or in accordance with arrangements made by him⁸.

The Secretary of State⁹ may by order amend these provisions so as to add, amend or remove an exception to the prohibition contained¹⁰ in them¹¹.

1 As to the meaning of 'betting premises licence' see PARA 460 at head (5).

2 As to the meaning of 'track' see PARA 372 note 8.

3 As to the meaning of 'accepting a bet' see PARA 312 note 2.

4 As to the meaning of 'pool betting' see PARA 313.

5 Gambling Act 2005 s 179(1).

6 As to the meaning of 'horserace pool betting' see PARA 313.

7 As to the meaning of 'holder' see PARA 486 note 10.

8 Gambling Act 2005 s 179(2).

9 As to the Secretary of State see PARA 2.

10 Is an exception to the Gambling Act 2005 s 179(1): see the text and notes 1-5.

11 See the Gambling Act 2005 s 179(3). At the date at which this volume states the law, no such order had been made.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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498. Exclusion of children from track areas.

A premises licence¹ in respect of a track² must be subject to the condition that the licensee³ must ensure that children⁴ and young persons⁵ are excluded from:

- 1586 (1) any area where facilities for betting⁶ are provided⁷; and
- 1587 (2) any area where a gaming machine⁸, other than a Category D machine⁹, is situated¹⁰.

Head (1) above does not, however, apply:

- 1588 (a) to a dog track¹¹ on a day on which dog racing takes place, or is expected to take place, on the track;
- 1589 (b) to a horse racecourse¹² on a day on which horse racing takes place, or is expected to take place, on the course; and
- 1590 (c) to any other track on a day on which a race or other sporting event takes place, or is expected to take place, on the track¹³.

The Secretary of State¹⁴ may by order amend these provisions so as to add, remove or amend an exception to head (1) above¹⁵.

1 As to the meaning of 'premises licence' see PARA 460 note 1.

2 As to the meaning of 'track' see PARA 372 note 8.

3 As to the meaning of 'licensee' see PARA 478 note 3.

4 As to the meaning of 'child' see PARA 331 note 2.

5 As to the meaning of 'young person' see PARA 353 note 5.

6 As to the meaning of 'betting' see PARA 312.

7 As to the meaning of 'providing facilities' for gambling see PARA 309. For these purposes, a reference to the area where facilities are provided is a reference to any place in which it is possible to take advantage of the facilities: Gambling Act 2005 s 182(3).

8 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547.

9 As to categories of gaming machine see generally PARA 548; and as to the meaning of 'Category D gaming machine' see PARA 552.

10 Gambling Act 2005 s 182(1). For these purposes, a reference to the area where a machine is situated is a reference to any place in which it is possible to use the machine: s 182(3).

11 As to the meaning of 'dog track' see PARA 372 note 8.

12 As to the meaning of 'horse racecourse' see PARA 372 note 8.

13 Gambling Act 2005 s 182(2) (amended by SI 2007/1410).

14 As to the Secretary of State see PARA 2.

15 See the Gambling Act 2005 s 182(4). The Secretary of State has exercised this power by making the Gambling Act 2005 (Exclusion of Children from Track Areas) Order 2007, SI 2007/1410, cited in note 13.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(vi) Specific Cases/C. BETTING PREMISES LICENCES/(C) Track Premises Licences/499. Mandatory conditions attaching to track premises licences.

499. Mandatory conditions attaching to track premises licences.

The following conditions must be attached to track premises licences¹:

- 1591 (1) no customer must be able to access the premises² directly from any other premises in respect of which one of the following premises licences³ has effect, namely a casino premises licence⁴ or an adult gaming centre premises licence⁵;
- 1592 (2) a notice stating that no person under the age of 18 is permitted to bet⁶ on the premises must be displayed in a prominent place at every public entrance to the premises⁷;
- 1593 (3) the terms on which a bet may be placed must be displayed in a prominent place within the premises to which customers wishing to use facilities for betting have unrestricted access⁸;
- 1594 (4) the premises licence holder⁹ must make arrangements to ensure that betting operators¹⁰ who are admitted to the premises for the purpose of accepting bets¹¹ will be operating under a valid operating licence¹² and are enabled to accept such bets in accordance with either:
 - 99 154. (a) the statutory conditions imposed with regard to a general betting operating licence¹³ or a pool betting operating licence¹⁴; or
 - 155. (b) an authorisation¹⁵ with regard to a horserace pool betting operating licence¹⁶;
- 100 1595 (5) the premises licence holder must make arrangements to ensure that reasonable steps are taken to remove from the premises any person who is found to be accepting bets on the premises otherwise than in accordance with the Gambling Act 2005¹⁷;
- 1596 (6) any ATM¹⁸ made available for use on the premises must be located in a place that requires any customer who wishes to use it to cease gambling¹⁹ in order to do so²⁰.

In addition, the following condition must be attached to track premises licences in respect of premises that are horse racecourses²¹, namely that the licence holder must provide a place on the premises where betting operators and betting operators' assistants²², including small-scale operators²³, may carry on business in connection with providing facilities for betting²⁴ and to which the public may resort for the purpose of betting²⁵. Until 1 September 2012, however, different additional conditions must be attached to converted track premises licences²⁶ in respect of premises that are horse racecourses²⁷ and the above additional condition does not apply to them²⁸.

The following additional conditions must be attached to track premises licences in respect of premises that are dog tracks²⁹:

- 1597 (i) a totalisator³⁰ on the premises must only be operated while the public is admitted to the premises for the purpose of attending dog races and no other sporting events are taking place on the premises, and for effecting with persons on the premises betting transactions on dog races taking place on the premises³¹; and

1598 (i) at any time during which the totalisator is being lawfully used on the premises:

101

156. (A) no betting operator or betting operator's assistant must be excluded from the premises by reason only of the fact that he proposes to accept or negotiate bets on the premises; and

157. (B) there must be made available on the premises space for betting operators and betting operators' assistants where they can conveniently accept and negotiate bets in connection with dog races run on the premises on that day³².

102

1 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 16(1). As to the meaning of 'track premises licence' see PARA 484 note 18.

2 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

3 As to the meaning of 'premises licence' see PARA 460 note 1.

4 As to the meaning of 'casino premises licence' see PARA 460 at head (1).

5 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 6 Pt 1 para 1. As to the meaning of 'adult gaming centre premises licence' see PARA 460 at head (3).

6 As to the meaning of 'bet' see PARA 312.

7 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 6 Pt 1 para 2.

8 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 6 Pt 1 para 3.

9 As to the meaning of 'holder' see PARA 486 note 10.

10 'Betting operator' means a person who in the course of the business of a general betting operating licence holder or pool betting operating licence holder accepts or negotiates bets: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 2. As to the meanings of 'general betting operating licence' and 'pool betting operating licence' see PARA 349 at heads (3)-(4); and as to the meaning of 'holder' of such a licence see PARA 350 note 5.

11 As to the meaning of 'accepting a bet' see PARA 312 note 2.

12 As to the meaning of 'operating licence' see PARA 349 note 2.

13 Ie imposed under the Gambling Act 2005 s 92: see PARA 371.

14 Ie imposed under the Gambling Act 2005 s 93: see PARA 372.

15 Ie under the Gambling Act 2005 s 94: see PARA 373.

16 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 6 Pt 1 para 4. As to the meaning of 'horserace pool betting' see PARA 313.

17 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 6 Pt 1 para 5.

18 As to the meaning of 'ATM' see PARA 490 note 9.

19 As to the meaning of 'gambling' see PARA 308.

20 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 6 Pt 1 para 6.

21 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 16(2). As to the meaning of 'horse racecourse' see PARA 372 note 8.

22 'Betting operator's assistant' means a person who carries out any other functions in the course of the business of a general betting operating licence holder or pool betting operating licence holder in connection with the licensed activities: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 2. As to the meaning of 'the licensed activities' see PARA 354 note 3.

23 For these purposes, the reference to 'small-scale operators' has the same meaning as prescribed in the Gambling Act 2005 (Definition of Small-scale Operator) Regulations 2006, SI 2006/3266 (see PARA 401): Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 6 Pt 2 para 2(3).

24 As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'betting' see PARA 312.

25 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 6 Pt 2 para 2(1), (2).

26 For these purposes, 'converted track premises licence' means a premises licence issued in respect of a track where (1) the holder of the licence held a certificate under the Betting, Gaming and Lotteries Act 1963 s 13 (repealed), in respect of the same or substantially the same premises ('the 1963 Act permission'); (2) the 1963 Act permission had effect immediately before 1 September 2007; and (3) the holder of the licence was granted the premises licence, under transitional provisions made under the Gambling Act 2005 Sch 18 para 9, by reason of his holding the 1963 Act permission: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 6 Pt 2 para 3.

27 The following provisions apply to converted track premises licences in respect of premises that are horse racecourses: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 6 Pt 2 para 1(1). The licence holder must ensure that in respect of any part of the track, which immediately before 1 September 2007 was made available for the purposes of complying with a condition imposed under the Betting, Gaming and Lotteries Act 1963 s 13(2) (repealed) (which provided for conditions to be imposed on a certificate under s 13 (repealed) relating to the places which were to be provided for enabling betting to take place on the track), that part continues to be made available for the purposes of enabling betting operators and betting operators' assistants to use it for carrying on business in connection with providing facilities for betting: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 6 Pt 2 para 1(2). This is without prejudice to any application under the Gambling Act 2005 s 187 (application to vary a premises licence: see PARA 520) to change the location of the part of the track to which the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 6 Pt 2 para 1(2) applies: Sch 6 Pt 2 para 1(3). Where such an application is granted, Sch 6 Pt 2 para 1(2) is to have effect as if it required the licence holder to ensure that the part of the track identified in the application as the new location for the area referred to in Sch 6 Pt 2 para 1(2) is made available for the purposes of enabling betting operators and betting operators' assistants to carry on business in connection with providing facilities for betting: Sch 6 Pt 2 para 1(4). References in Sch 6 Pt 2 para 1 to an 'existing betting area' are to any part of the track which is required to be made available in accordance with Sch 6 Pt 2 para 1(1)-(4) for the purposes of enabling betting operators and betting operators' assistants to carry on business in connection with providing facilities for betting: Sch 6 Pt 2 para 1(5). The charge for admission to an existing betting area for the purposes of carrying on business in connection with providing facilities for betting must not exceed: (1) where payable by a betting operator, five times the cost of the highest charge paid by members of the public who are authorised to enter that part of the track; and (2) where payable by a betting operator's assistant, the cost of the highest charge paid by members of the public who are authorised to enter that part of the track: Sch 6 Pt 2 para 1(6). A betting operator or betting operator's assistant must not be charged, for admission to an existing betting area, an amount which differs from that charged to any other betting operator or betting operator's assistant for admission to that part of the track: Sch 6 Pt 2 para 1(7). No charges may be made to betting operators and betting operators' assistants who are admitted to the existing betting areas of the track, other than (a) the charge for admission in accordance with Sch 6 Pt 2 para 1(6), (7); and (b) charges levied to cover costs reasonably incurred in connection with enabling betting operators and betting operators' assistants to operate in the existing betting area: Sch 6 Pt 2 para 1(8). These provisions do not apply after 31 August 2012: Sch 6 Pt 2 para 1(9).

28 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 6 Pt 2 para 2(4).

29 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 16(1). As to the meaning of 'dog track' see PARA 372 note 8.

30 For these purposes, 'totalisator' means the apparatus for betting known as the totalisator or pari mutuel, or any other machine or instrument of betting of a like nature, whether mechanically operated or not: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 6 Pt 3 para 3.

31 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 6 Pt 3 para 1.

32 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 6 Pt 3 para 2.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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500. Default condition attaching to track premises licences.

The following condition must be attached to track premises licences¹ unless excluded by the licensing authority² which issues the licence in exercise of its statutory powers³ to do so⁴, namely that no facilities for gambling⁵ must be provided⁶ on the premises⁷ between the hours of 10 pm on one day, and 7 am on the next day⁸. That prohibition does not, however, apply on days when a sporting event is taking place on the premises, in which case gambling transactions may take place at any time during that day⁹.

1 As to the meaning of 'track premises licence' see PARA 484 note 18.

2 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARA 466-468.

3 Ie under the Gambling Act 2005 s 169(1)(b): see PARA 486.

4 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 17.

5 As to the meaning of 'gambling' see PARA 308.

6 As to the meaning of 'providing facilities' for gambling see PARA 309.

7 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

8 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 6 Pt 4 para 1.

9 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 6 Pt 4 para 2.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(vi) Specific Cases/D. BINGO PREMISES LICENCES AND CASINO PREMISES LICENCES/(A) Common Prohibition on Giving or Arranging Credit/501. Prohibition on giving credit etc.

D. BINGO PREMISES LICENCES AND CASINO PREMISES LICENCES

(A) COMMON PROHIBITION ON GIVING OR ARRANGING CREDIT

501. Prohibition on giving credit etc.

The following provisions apply to casino premises licences¹ and bingo premises licences². Such a premises licence must be subject to the condition that the licensee³ does not:

- 1599 (1) give credit⁴ in connection with gambling⁵ authorised⁶ by the licence; or
- 1600 (2) participate in, arrange, permit or knowingly facilitate the giving of credit in connection with gambling authorised by the licence⁷.

That condition does not, however, prevent the licensee from permitting the installation and use on the premises⁸ of a machine⁹ enabling cash to be obtained on credit from a person (the 'credit provider'), provided that:

- 1601 (a) the licensee has no other commercial connection with the credit provider in relation to gambling;
- 1602 (b) the licensee neither makes nor receives any payment or reward, whether by way of commission, rent or otherwise in connection with the machine; and
- 1603 (c) any conditions about the nature, location or use of the machine attached to the licence¹⁰ are complied with¹¹.

1 As to the meaning of 'casino premises licence' see PARA 460 at head (1).

2 Gambling Act 2005 s 177(1). As to the meaning of 'bingo premises licence' see PARA 460 at head (2).

3 As to the meaning of 'licensee' see PARA 478 note 3.

4 As to the meaning of 'credit' see PARA 361 note 5 (definition applied by the Gambling Act 2005 s 177(4)).

5 As to the meaning of 'gambling' see PARA 308.

6 As to the meaning of 'authorise' see PARA 349 note 5.

7 Gambling Act 2005 s 177(2).

8 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

9 As to the meaning of 'machine' see PARA 493 note 13.

10 Ie by virtue of the Gambling Act 2005 s 167, s 168 or s 169: see PARA 486.

11 Gambling Act 2005 s 177(3).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(B) BINGO PREMISES LICENCES

502. Gaming machines.

A bingo premises licence¹ must authorise² the holder³:

- 1604 (1) to make up to four Category B gaming machines⁴ available for use on the premises⁵;
- 1605 (2) to make any number of Category C gaming machines⁶ available for use on the premises; and
- 1606 (3) to make any number of Category D⁷ gaming machines available for use on the premises⁸.

1 As to the meaning of 'bingo premises licence' see PARA 460 at head (2).

2 As to the meaning of 'authorise' see PARA 349 note 5.

3 As to the meaning of 'holder' see PARA 349 note 5.

4 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547; as to categories of gaming machine generally see PARA 548; and as to the meaning of 'Category B gaming machine' see PARA 550. For this purpose, a reference to a Category B gaming machine is to be treated as referring to sub-categories B3 or B4 (see PARA 550 at heads (3), (5)): Categories of Gaming Machine Regulations 2007, SI 2007/2158, reg 6(3)(c).

5 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

6 As to the meaning of 'Category C gaming machine' see PARA 551.

7 As to the meaning of 'Category D gaming machine' see PARA 552.

8 Gambling Act 2005 s 172(7). See further s 172(10) (see PARA 487 text and notes 11-17); and s 172(11) (see PARA 489 note 5).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

502 Gaming machines

TEXT AND NOTE 4--Head (1). Now up to eight Category B gaming machines: Gambling Act 2005 s 172(7) (amended by SI 2009/324).

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503. Mandatory conditions attaching to bingo premises licences.

The following conditions must be attached to bingo premises licences¹:

- 1607 (1) a notice stating that no person under the age of 18 years is permitted to play bingo² on the premises³ must be displayed in a prominent place at every entrance to the premises⁴;
- 1608 (2) no customer must be able to enter the premises directly from any other premises in respect of which one of the following permissions has effect, namely a casino premises licence⁵, an adult gaming centre premises licence⁶ or a betting premises licence⁷ other than a track premises licence⁸;
- 1609 (3) where children⁹ or young persons¹⁰ or both are permitted by the licence holder¹¹ to enter the premises, and Category B or Category C gaming machines¹² are made available for use on the premises, any area of the premises to which such gaming machines are located:
 - 103 158. (a) must be separated from the rest of the premises by a physical barrier which is effective to prevent access other than by an entrance designed for the purpose;
 - 159. (b) must be supervised¹³ at all times to ensure children or young persons or both do not enter the area; and
 - 160. (c) must be arranged in such a way that ensures all parts of the area can be observed by the persons¹⁴ with responsibility for such supervision¹⁵;
- 104 1610 and a notice stating that no person under the age of 18 years is permitted to enter the area must be displayed in a prominent place at the entrance to any area of the premises in which Category B or Category C gaming machines are made available for use¹⁶;
- 1611 (4) in the case of a charge for admission to the premises, a notice of that charge must be displayed in a prominent place at the principal entrance to the premises¹⁷; and in the case of any other charges in respect of gaming¹⁸, a notice setting out the specified information¹⁹ must be displayed at the main point where payment for the charge is to be made²⁰;
- 1612 (5) the rules of each type of game that is available to be played on the premises other than games played on gaming machines must be made available to customers within the premises²¹; and this condition may be satisfied by displaying a sign setting out the rules, making available leaflets or other written material containing the rules, or running an audio-visual guide to the rules prior to any bingo game being commenced²²;
- 1613 (6) any ATM²³ made available for use on the premises must be located in a place that requires any customer who wishes to use it to cease gambling²⁴ in order to do so²⁵.

¹ Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 10. As to the meaning of 'bingo premises licence' see PARA 460 at head (2).

- 2 As to the meaning of 'bingo' see PARA 349 note 8.
- 3 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.
- 4 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 2 Pt 1 para 1.
- 5 As to the meaning of 'casino premises licence' see PARA 460 at head (1).
- 6 As to the meaning of 'adult gaming centre premises licence' see PARA 460 at head (3).
- 7 As to the meaning of 'betting premises licence' see PARA 460 at head (5).
- 8 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 2 Pt 1 para 2. As to the meaning of 'track premises licence' see PARA 484 note 18.
- 9 As to the meaning of 'child' see PARA 331 note 2.
- 10 As to the meaning of 'young person' see PARA 353 note 5.
- 11 As to the meaning of 'holder' see PARA 486 note 10.
- 12 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547. As to categories of gaming machine generally see PARA 548; as to the meaning of 'Category B gaming machine' see PARA 550; and as to the meaning of 'Category C gaming machine' see PARA 551.
- 13 The reference in the text to supervision means supervision by (1) one or more persons whose responsibilities include ensuring children or young persons or both do not enter the area; or (2) closed circuit television which is monitored by one or more persons whose responsibilities include ensuring that children or young persons or both do not enter the area: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 2 Pt 1 para 3(3).
- 14 Ie the persons mentioned in the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 2 Pt 1 para 3(3): see note 13.
- 15 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 2 Pt 1 para 3(1), (2).
- 16 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 2 Pt 1 para 3(1), (4).
- 17 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 2 Pt 1 para 4(1).
- 18 A reference in the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 2 Pt 1 para 4 (see head (4) in the text) to a charge in respect of gaming does not include an amount paid for an opportunity to win one or more prizes in gaming to which the Gambling Act 2005 s 288 (meaning of 'prize gaming': see PARA 592) applies: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 2 Pt 1 para 4(5). As to the meaning of 'gaming' see PARA 310.
- 19 The notice must include the following information: (1) the cost (in money) of each game card (or set of game cards) payable by an individual in respect of a game of bingo; (2) in respect of each game card (or set of game cards) referred to in head (1) above, the amount that will be charged by way of a participation fee for entitlement to participate in that game; and (3) a statement to the effect that all or part of the participation fee may be waived at the discretion of the person charging it: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 2 Pt 1 para 4(3). 'Game card' means anything (including any electronic device) which provides an individual with the opportunity to win one or more prizes in respect of a game of bingo: reg 2. As to the meaning of 'participation fee' see PARA 370 note 4.
- 20 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 2 Pt 1 para 4(2). The notice may be displayed in electronic form: Sch 2 Pt 1 para 4(4).
- 21 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 2 Pt 1 para 5(1).
- 22 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 2 Pt 1 para 5(2).

23 As to the meaning of 'ATM' see PARA 490 note 9.

24 As to the meaning of 'gambling' see PARA 308.

25 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 2 Pt 1 para 6.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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504. Default condition attaching to bingo premises licences.

The following condition must be attached to bingo premises licences¹ unless excluded by the licensing authority² which issues the licence, in exercise of its statutory powers³ to do so⁴, namely that no facilities for gambling⁵ must be provided⁶ on the premises⁷ between the hours of midnight and 9 am⁸. That condition does not, however, apply to making gaming machines⁹ available for use¹⁰.

1 As to the meaning of 'bingo premises licence' see PARA 460 at head (2).

2 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

3 Ie under the Gambling Act 2005 s 169(1)(b): see PARA 486.

4 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 11.

5 As to the meaning of 'gambling' see PARA 308.

6 As to the meaning of 'providing facilities' for gambling see PARA 309.

7 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

8 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 2 Pt 2 para 1.

9 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547.

10 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 2 Pt 2 para 2.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(C) CASINO PREMISES LICENCES

505. Casino premises licences; in general.

The Gambling Act 2005 provides that a casino premises licence¹ may be issued only in respect of a regional casino², a large casino³, or a small casino⁴. There are overall limits on the numbers of each type of licence that may be issued⁵. At the date at which this volume states the law, however, the provisions setting out those limits were not in force as respects regional casinos⁶ and as a result no regional casino licence might be issued⁷.

A casino premises licence must:

- 1614 (1) authorise⁸ the holder⁹ to use the premises¹⁰ to make available any number of games of chance¹¹ other than casino games¹²;
- 1615 (2) authorise the holder, and any person authorised by him in writing, to use the premises for the provision of facilities¹³ for bingo¹⁴, betting¹⁵, or both bingo and betting¹⁶;

but in respect of a small casino, head (2) above does not apply in so far as it authorises bingo¹⁷.

Regulations made by the Secretary of State:

- 1616 (a) imposing mandatory conditions¹⁸ must, in particular, make provision in relation to casino premises licences imposing limits in respect of machines¹⁹ of a kind that would be gaming machines²⁰ but for the statutory exclusion of certain machines designed or adapted to enable individuals to play a real game of chance²¹; and the limits may, in particular, operate by reference to the number of machines, or the number of players that the machines are designed or adapted to accommodate²²;
- 1617 (b) imposing mandatory conditions²³ or prescribing default conditions²⁴ may, in particular, make provision in relation to casino premises licences, or in relation to a class of casino premises licence, for a condition requiring the provision of recreational or other facilities of a specified kind²⁵.

1 As to the meaning of 'casino premises licence' see PARA 460 at head (1).

2 As to the classification of casinos by regulations see the Gambling Act 2005 s 7(5)-(7) (s 7(5)(a) not in force); and PARA 311. There is no statutory definition of 'regional casino' for these purposes; and at the date at which this volume states the law, it is not possible to apply for a casino premises licence in respect of such a casino.

3 As to the meaning of 'large casino' see PARA 311.

4 Gambling Act 2005 s 174(1). As to the meaning of 'small casino' see PARA 311. No new premises licence may be granted for a casino below the minimum size for a small casino, but a commencement order made under s 358(1) may (1) disapply s 174(1) in respect of premises that were in use, or could lawfully be used, for the operation of a casino (within the meaning of s 7(1)-(3): see PARA 311) when Pt 8 (ss 150-213, Sch 9) came into force; (2) provide for the application of the Gambling Act 2005, with any specified modifications, in relation to premises of that kind; (3) disapply, or modify the application of, a provision of the 2005 Act in relation to specified things done on or in relation to premises of that kind: see Sch 18 paras 1(1), 3. Where an application

to convert an existing casino licence under the Gaming Act 1968 Pt II (ss 9-25) (repealed) (a 'conversion application') has been made and granted under the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 6, Sch 4 Pt 7 (paras 53-66), the Gambling Act 2005 s 174(1) does not apply: see the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 65(7). As to the provisions of Sch 4 para 65 see further *R (on the application of British Casino Association Ltd) v Secretary of State for Culture, Media and Sport* [2007] EWHC 1312 (Admin), [2007] LLR 437, [2007] All ER (D) 79 (Jun), cited in PARA 509 note 15.

5 See the Gambling Act 2005 s 175 (s 175(1) not in force); and PARA 506.

6 See the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 2(4), Sch 3B (art 2(4) substituted, and Sch 3B added, by SI 2007/2169); the Gambling Act 2005 (Commencement No 8) Order 2008, SI 2008/1326, art 2, Schedule.

7 See note 6.

8 As to the meaning of 'authorise' see PARA 349 note 5.

9 As to the meaning of 'holder' see PARA 486 note 10.

10 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

11 As to the meaning of 'game of chance' see PARA 310.

12 Gambling Act 2005 s 174(2). As to the meaning of 'casino game' see PARA 310. Section 174(2) is not to have effect to authorise the playing of bingo in premises in respect of which a converted casino premises licence has effect; but is to have effect to authorise the holder of a converted casino premises licence to make available other games of chance which are not casino games, irrespective of whether or not casino games are also made available on the premises: Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 65(8). As to the meaning of 'converted casino premises licence' see PARA 460 note 5; and as to the provisions of Sch 4 para 65 see further *R (on the application of British Casino Association Ltd) v Secretary of State for Culture, Media and Sport* [2007] EWHC 1312 (Admin), [2007] LLR 437, [2007] All ER (D) 79 (Jun), cited in PARA 509 note 15.

13 As to the meaning of 'providing facilities' for gambling see PARA 309.

14 As to the meaning of 'bingo' see PARA 349 note 8.

15 As to the meaning of 'betting' see PARA 312.

16 Gambling Act 2005 s 174(3). Section 174(3) does not apply to a converted casino premises licence to which the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 65 applies: Sch 4 para 65(9). As to the provisions of Sch 4 para 65 see further *R (on the application of British Casino Association Ltd) v Secretary of State for Culture, Media and Sport* [2007] EWHC 1312 (Admin), [2007] LLR 437, [2007] All ER (D) 79 (Jun), cited in PARA 509 note 15.

17 Gambling Act 2005 s 174(4). The Secretary of State may by order repeal s 174(4), (5): s 174(5). As to the Secretary of State see PARA 3. At the date at which this volume states the law, no such order had been made.

18 Ie regulations under the Gambling Act 2005 s 167: see PARA 484.

19 As to the meaning of 'machine' see PARA 493 note 13.

20 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547.

21 Ie but for the Gambling Act 2005 s 235(2)(i): see PARA 547. As to the meaning of 'real' in the context of a game see PARA 495 note 12.

22 Gambling Act 2005 s 174(6). As to the exercise of this power to make regulations see PARA 510 et seq.

23 See note 18.

24 Ie regulations under the Gambling Act 2005 s 168: see PARA 485.

25 Gambling Act 2005 s 174(7). Section 174(7) is without prejudice to the generality of ss 167, 168, 169 (see PARAS 484-486): s 174(8). As to the exercise of this power to make regulations see PARA 510 et seq.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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506. Overall limits for casino premises licences.

No more than one casino premises licence¹ may have effect at any time in respect of regional casinos²; no more than eight casino premises licences may have effect at any time in respect of large casinos³; and no more than eight casino premises licences may have effect at any time in respect of small casinos⁴. These limits may be amended or removed by the Secretary of State⁵. A converted casino premises licence⁶ does not count for the purposes of any of these limits⁷.

The Secretary of State must, having consulted the Scottish Ministers and the Welsh Ministers, by order make provision for determining the geographical distribution of casino premises licences within the limits specified above; and for that purpose the order must:

1618 (1) specify which licensing authorities⁸ may issue casino premises licences of a specified kind; and

1619 (2) in respect of each specified authority, specify the number of casino premises licences of each kind issued by the authority that may have effect at any time⁹.

An application for a casino premises licence may not be made to a licensing authority if the limits set out above and the order described above would prevent the authority from granting the application¹⁰. Nor may an application for a provisional statement¹¹ be made to a licensing authority if it relates to a casino and is made at a time when those limits and that order would prevent the authority from granting a casino premises licence in response to an application made in reliance on the provisional statement¹².

1 As to the meaning of 'casino premises licence' see PARA 460 at head (1).

2 Gambling Act 2005 s 175(1) (not yet in force). As to the classification of casinos by regulations see the Gambling Act 2005 s 7(5)-(7); and PARA 311. There is no statutory definition of 'regional casino' for these purposes; and at the date at which this volume states the law, it is not possible to apply for a casino premises licence in respect of such a casino.

3 Gambling Act 2005 s 175(2). As to the meaning of 'large casino' see PARA 311.

4 Gambling Act 2005 s 175(3). As to the meaning of 'small casino' see PARA 311.

5 The Secretary of State may by order (1) amend any of the Gambling Act 2005 s 175(1), (2) and (3) so as to substitute a new maximum number of casino premises licences; (2) repeal any of s 175(1), (2) and (3); s 175(8). At the date at which this volume states the law, no such order had been made. As to the Secretary of State see PARA 2.

6 As to the meaning of 'converted casino premises licence' see PARA 460 note 5.

7 Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 65(10); and as to the provisions of Sch 4 para 65 see further *R (on the application of British Casino Association Ltd) v Secretary of State for Culture, Media and Sport* [2007] EWHC 1312 (Admin), [2007] LLR 437, [2007] All ER (D) 79 (Jun), cited in PARA 509 note 15.

8 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468. A licensing committee may resolve not to issue any casino premises licences: see the Gambling Act 2005 s 166; and PARA 465. See further note 9.

9 Gambling Act 2005 s 175(4). The following licensing authorities may issue large casino premises licences: Great Yarmouth Borough Council, Kingston upon Hull City Council, Leeds City Council, Middlesbrough Borough Council, Milton Keynes Borough Council, Newham London Borough Council, Solihull Metropolitan Borough Council, and Southampton City Council: Gambling (Geographical Distribution of Large and Small Casino Premises Licences) Order 2008, SI 2008/1327, art 2(1). No more than one such licence issued by each licensing authority may have effect at any time: art 2(2). The following licensing authorities may issue small casino premises licences: Bath and North East Somerset District Council, East Lindsey District Council, Luton Borough Council, Scarborough Borough Council, Swansea City and County Council, Torbay Borough Council, Wigtown Divisional Licensing Board in the area of Dumfries and Galloway Council, and Wolverhampton City Council: art 3(1). No more than one such licence issued by each licensing authority may have effect at any time: art 3(2).

10 Gambling Act 2005 s 175(5). This does not apply to an application for a converted casino premises licence: Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 65(11); and as to the provisions of Sch 4 para 65 see further *R (on the application of British Casino Association Ltd) v Secretary of State for Culture, Media and Sport* [2007] EWHC 1312 (Admin), [2007] LLR 437, [2007] All ER (D) 79 (Jun), cited in PARA 509 note 15.

11 As to provisional statements see PARAS 474-475.

12 Gambling Act 2005 s 175(6).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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507. Applications for casino premises licences where overall limit has effect.

The following provisions apply to an application for a casino premises licence¹ of a kind in respect of which an overall limit² has effect³. They do not apply to an application for a converted casino premises licence⁴. An application for the variation or transfer of a premises licence is not to be treated⁵ for these purposes as an application for a premises licence⁶.

Before considering an application to which these provisions apply a licensing authority⁷ must comply with regulations of the Secretary of State⁸ about inviting competing applications⁹. The regulations must, in particular, make provision:

- 1620 (1) about the publication of invitations, including provision as to the manner and timing of publication and the matters to be published¹⁰, and
- 1621 (2) about the timing of responses¹¹.

Where, whether or not as a result of the competition provided for by such regulations, a number of applications for a casino premises licence are made to a licensing authority ('the competing applications'), and as a result of the overall limits¹² the authority is able to grant one or more, but not all, of the competing applications, the licensing authority must first consider in respect of each application whether it would grant the application¹³ if an overall limit¹⁴ did not apply¹⁵. For that purpose, the authority must not have regard to whether any of the other competing applications is more deserving of being granted¹⁶; and subject to that, each competing applicant is an interested party¹⁷ in relation to each of the other competing applications¹⁸. Part 8 of the Gambling Act 2005¹⁹ applies with specified²⁰ modifications²¹.

If a licensing authority determines that it would grant a number of competing applications greater than the number which it can grant as a result of the overall limit²², the authority must then determine which of those applications to grant²³. For that purpose the authority:

- 1622 (a) must determine which of the competing applications would, in the authority's opinion, be likely if granted to result in the greatest benefit to the authority's area;
- 1623 (b) may enter into a written agreement with an applicant, whether as to the provision of services in respect of the authority's area or otherwise;
- 1624 (c) may determine to attach conditions²⁴ to any licence issued so as to give effect to an agreement entered into under head (b) above; and
- 1625 (d) may have regard to the effect of an agreement entered into under head (b) above in making the determination specified in head (a) above²⁵.

Having so determined to grant one or more applications, the authority must grant that application or those applications²⁶ and reject²⁷ the other competing applications²⁸. The list of persons to whom notice of the grant or grants must be sent²⁹ is to be treated as including any competing applicant whose application the authority decided provisionally³⁰ to grant³¹.

The Secretary of State may issue a code of practice about the procedure to be followed in making the determinations required by the above provisions³² and matters to which a licensing

authority should have regard in making those determinations³³; and a licensing authority must comply with such a code of practice³⁴.

Where a licensing authority issues a casino premises licence following a determination to grant an application in accordance with heads (a) to (d) above, a condition attached to the licence³⁵ may, in particular, give effect to any agreement entered into under head (b) above³⁶. In that case:

- 1626 (i) the condition must refer to the agreement;
- 1627 (ii) a copy of the agreement must be attached to the licence; and
- 1628 (iii) a variation of the agreement has effect only if accompanied by variation³⁷ of the condition³⁸.

Where the two-stage consideration process described above³⁹ results in the issue of a provisional statement, then the procedure for inviting competing applications and that two-stage process⁴⁰ does not apply by reason only of the fact that an application for a casino premises licence is made in reliance on the provisional statement and while it has effect⁴¹. The licensing authority may provide in the provisional statement for it to cease to have effect at the end of a specified period⁴².

1 As to the meaning of 'casino premises licence' see PARA 460 at head (1).

2 Is a limit under the Gambling Act 2005 s 175: see PARA 506.

3 Gambling Act 2005 Sch 9 para 1(1). A reference in Sch 9 to an application for a casino premises licence includes a reference to an application for a provisional statement where Sch 9 would apply to an application for a premises licence made in reliance on the provisional statement: Sch 9 para 9. As to provisional statements see the text and notes 39-42; and see generally ss 204-205; and PARAS 474-475.

4 Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 65(11). As to the meaning of 'converted casino premises licence' see PARA 460 note 5; and as to the provisions of Sch 4 para 65 see further *R (on the application of British Casino Association Ltd) v Secretary of State for Culture, Media and Sport* [2007] EWHC 1312 (Admin), [2007] LLR 437, [2007] All ER (D) 79 (Jun), cited in PARA 509 note 15.

5 Is despite the Gambling Act 2005 s 187(3) (see PARA 520) and s 188(2) (see PARA 521).

6 Gambling Act 2005 Sch 9 para 1(2).

7 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468. A licensing authority may resolve not to issue any casino premises licences: see s 166; and PARA 465. As to the authorities which may issue large or small casino premises licences see PARA 506 note 9. At the date at which this volume states the law, no licensing authority had power to issue a regional casino premises licence.

8 As to the Secretary of State see PARA 2.

9 Gambling Act 2005 Sch 9 para 2(1). As to the relevant regulations see notes 10-11.

10 Gambling Act 2005 Sch 9 para 2(2)(a). Before considering an application under s 159 (see PARA 471) for a large or small casino premises licence, or an application under s 204 (see PARA 474) for a provisional statement in respect of a large or small casino, a licensing authority must (1) publish an invitation calling for applications ('invitation'); and (2) make arrangements for the provision, free of charge, of a copy of information about an invited application ('application pack') to a person on request, until the closing date stated in the invitation to which the application pack relates: Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008, SI 2008/469, regs 2(1), 3(1). An invitation must be published in a manner that complies with reg 4, and contain the information required by reg 5 (reg 3(2)); and an application pack must contain the information required by reg 6 (reg 3(3)).

An invitation must be published in a manner which the licensing authority considers is most likely to bring it to the attention of as many potential applicants in the United Kingdom and abroad as possible: reg 4(1). Without prejudice to the generality of reg 4(1), an invitation must be published at least once in a trade newspaper, journal or similar publication which the licensing authority consider is likely to be read by persons in the United

Kingdom and abroad who are potential applicants: reg 4(2). As to the meaning of 'United Kingdom' see PARA 16 note 8. An invitation must state: (a) whether the licensing authority proposes to issue a casino premises licence for a large or small casino; (b) the latest date by which an application must be made in order to be considered by the licensing authority ('closing date'); (c) the place from which a person may obtain an application pack; and (d) such other information as the licensing authority considers appropriate: reg 5(1). The closing date may not be earlier than the date which is three months after the later of the date on which the invitation is last published, and the date on which the application pack is first available to a person on request: reg 5(2).

An application pack must include: (i) a statement that an application must be made in the form and manner prescribed by the application regulations, and no information, other than information required by the application regulations, may be included in or submitted with an application; (ii) a statement of the procedure that the licensing authority proposes to follow to determine whether to grant or reject an application; (iii) a statement that, in making any determination required by the Gambling Act 2005 Sch 9 para 4 (see the text and notes 16-21), the licensing authority will not take into account information which is relevant to a determination under Sch 9 para 5 (see the text and notes 22-31) unless that information is also relevant to the determination under Sch 9 para 4; (iv) a statement of the principles that the licensing authority proposes to apply in making any determination required by Sch 9 para 5; (v) the dates by which the licensing authority expects to make either the determination under s 163 (see PARA 482) (if the licensing authority only receives one application), or the determination under Sch 9 para 4 and any determination under Sch 9 para 5 that may be required (if the licensing authority receives more than one application); and (vi) such other information as the licensing authority considers appropriate: Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008, SI 2008/469, reg 6(1). The statement required by reg 6(1)(b) (see head (ii) above) must, in particular, include information about the two-stage consideration procedure under Sch 9 paras 4, 5: Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008, SI 2008/469, reg 6(2). 'The application regulations' means the regulations made under the Gambling Act 2005 s 159(6)(a), in relation to applications to licensing authorities in England and Wales, by the Secretary of State: Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008, SI 2008/469, reg 6(3).

11 Gambling Act 2005 Sch 9 para 2(2)(b). A licensing authority may not consider an application before the closing date stated in the invitation to which the application relates ('the relevant closing date') (Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008, SI 2008/469, reg 7(1)); and is not required to consider an application that is made after the relevant closing date (reg 7(2)). For the purposes of the Gambling Act 2005 and any regulations made under it, an application that is made before the relevant closing date must be treated as if it were made on the relevant closing date: Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008, SI 2008/469, reg 7(3).

12 Ie as a result of the Gambling Act 2005 s 175 and the order under it: see PARA 506.

13 Ie under the Gambling Act 2005 s 163: see PARA 482.

14 Ie if the Gambling Act 2005 s 175 did not apply.

15 Gambling Act 2005 Sch 9 paras 3, 4(1).

16 Gambling Act 2005 Sch 9 para 4(2)(a).

17 As to the meaning of 'interested party' generally see PARA 473 note 3.

18 Gambling Act 2005 Sch 9 para 4(2)(b).

19 Ie the Gambling Act 2005 Pt 8 (ss 150-213): see PARAS 460 et seq, 508 et seq.

20 The Gambling Act 2005 Pt 8 applies with the substitution for a reference to the grant of an application in s 163(1)(a) (see PARA 482) and s 206(2) (see PARA 532) of a reference to a provisional decision to grant an application subject to the provisions of Sch 9 para 5 (see the text and notes 22-31): Sch 9 para 4(2)(c).

21 Gambling Act 2005 Sch 9 para 4(2)(c). An appeal may be brought under s 206(1) or (2) (see PARA 532) in respect of a decision under Sch 9 para 4: Sch 9 para 8(1). While an appeal under s 206 could be brought by virtue of Sch 9 para 8(1), or has been brought by virtue of that provision and has not yet been either finally determined or abandoned, the licensing authority must take no action under Sch 9 para 5(2) (see the text and notes 22-23): Sch 9 para 8(2). Schedule 9 para 8(2) has effect in place of s 208 (see PARA 532) in respect of an appeal by virtue of Sch 9 para 8(1): Sch 9 para 8(3). See also note 20.

22 Ie as a result of the Gambling Act 2005 s 175 and the order under it.

- 23 Gambling Act 2005 Sch 9 para 5(1), (2). The reference in the text to granting the application is to granting it under s 163(1)(a) (see PARA 482): see Sch 9 para 5(2). No appeal may be brought under s 206 in respect of a decision under Sch 9 para 5: Sch 9 para 8(4).
- 24 Ie under the Gambling Act 2005 s 169: see PARA 486.
- 25 Gambling Act 2005 Sch 9 para 5(3); and see note 23.
- 26 Ie under the Gambling Act 2005 s 163(1)(a): see PARA 482.
- 27 Ie under the Gambling Act 2005 s 163(1)(b): see PARA 482.
- 28 Gambling Act 2005 Sch 9 para 5(4).
- 29 Ie the list in the Gambling Act 2005 s 164(1)(a): see PARA 483.
- 30 Ie under the Gambling Act 2005 Sch 9 para 4: see the text and notes 16-21.
- 31 Gambling Act 2005 Sch 9 para 5(5).
- 32 Ie required by the Gambling Act 2005 Sch 9 paras 4, 5: see the text and notes 16-31.
- 33 Gambling Act 2005 Sch 9 para 6(1).
- 34 Gambling Act 2005 Sch 9 para 6(2).
- 35 See note 24.
- 36 Gambling Act 2005 Sch 9 para 7(1).
- 37 Ie under the Gambling Act 2005 s 187: see PARA 520.
- 38 Gambling Act 2005 Sch 9 para 7(2).
- 39 Ie the process described in the Gambling Act 2005 Sch 9 paras 3-5: see the text and notes 12-31.
- 40 Ie the Gambling Act 2005 Sch 9 paras 2-5: see the text and notes 7-31.
- 41 Gambling Act 2005 Sch 9 para 10(1), (2).
- 42 Gambling Act 2005 Sch 9 para 10(3). A licensing authority may extend a period specified under Sch 9 para 10(3) on the application of the person to whom the provisional statement is issued; and (1) the Secretary of State may by regulations provide for the procedure to be followed in relation to an application under this provision; and (2) ss 206-209 (see PARAS 532-533) apply but (a) with the omission of s 206(2)(a); (b) as if s 208(1) referred not to a determination or other action under Pt 8 but to a provision included in a provisional statement under Sch 9 para 10(3); and (c) with any other necessary modifications: Sch 9 para 10(4).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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508. Access by children.

The Gambling Commission¹ must issue one or more codes of practice² about access to casino premises³ for children⁴ and young persons⁵. The code or codes issued in accordance with that requirement must, in particular:

- 1629 (1) require the holder⁶ of a casino premises licence⁷ to take specified steps to ensure that no child or young person enters premises or a part of premises which it would be an offence⁸ to permit him to enter ('prohibited premises or areas');
- 1630 (2) for that purpose, require the holder of a casino premises licence to ensure:
- 105 161. (a) that each entrance to prohibited premises or to a prohibited area is supervised by one or more persons whose responsibilities include ensuring compliance with the code of practice ('the supervisor'); and
- 162. (b) that arrangements are made to require evidence of age to be produced by any person seeking admission to prohibited premises or to a prohibited area unless the supervisor, reasonably, is certain that the person seeking admission is an adult⁹; and
- 106 1631 (3) make provision about the nature of evidence that may be used for the purpose of arrangements made in accordance with head (2)(b) above¹⁰.

By virtue of these provisions, a casino premises licence must be subject to the condition that the licensee¹¹ ensures compliance with any relevant code of practice issued in accordance¹² with them¹³.

1 As to the Gambling Commission see PARA 4.

2 Ie under the Gambling Act 2005 s 24: see PARA 337.

3 As to the meaning of 'premises' see PARA 311 note 5; and as to the meaning of 'casino' see PARA 311. See also PARA 461.

4 As to the meaning of 'child' see PARA 331 note 2.

5 Gambling Act 2005 s 176(1). As to the meaning of 'young person' see PARA 353 note 5.

The Commission has issued the *Code of Practice on Access to Casino Premises for Children and Young Persons*, contained in *Licence Conditions and Codes of Practice* Pt II (June 2007, Gambling Commission) which came into force on 1 September 2007. That code is set out in the current edition of Paterson's Licensing Acts. The code is also published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk. Revised *Licence Conditions and Codes of Practice* (October 2008, Gambling Commission) will come into force on 1 January 2009, and are accessible on the Commission's website.

6 As to the meaning of 'holder' see PARA 486 note 10.

7 As to the meaning of 'casino premises licence' see PARA 460 at head (1).

8 Ie under the Gambling Act 2005 s 47: see PARA 622.

9 As to the meaning of 'adult' see PARA 372 note 7.

- 10 Gambling Act 2005 s 176(2).
- 11 As to the meaning of 'licensee' see PARA 478 note 3.
- 12 It issued in accordance with the Gambling Act 2005 s 176(1): see the text and notes 1-5.
- 13 Gambling Act 2005 s 176(3).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(vi) Specific Cases/D. BINGO PREMISES LICENCES AND CASINO PREMISES LICENCES/(C) Casino Premises Licences/509. Gaming and betting machines; virtual gaming.

509. Gaming and betting machines; virtual gaming.

A casino premises licence¹ for a regional casino² using at least 40 gaming tables³ must, by virtue of these provisions, authorise⁴ the holder⁵ to make gaming machines⁶ available for use on the premises⁷ provided that:

- 1632 (1) each gaming machine is of Category A, B, C or D⁸; and
- 1633 (2) the number of gaming machines is not more than 25 times the number of gaming tables used in the casino, and is not more than 1,250⁹.

A casino premises licence for a large casino¹⁰ using at least one gaming table, or for a regional casino using fewer than 40 gaming tables, must, by virtue of these provisions, authorise the holder to make gaming machines available for use on the premises provided that:

- 1634 (a) each gaming machine is of Category B, C or D; and
- 1635 (b) the number of gaming machines is not more than five times the number of gaming tables used in the casino, and is not more than 150¹¹.

A casino premises licence for a small casino¹² using at least one gaming table must, by virtue of these provisions, authorise the holder to make gaming machines available for use on the premises provided that:

- 1636 (i) each gaming machine is of Category B, C or D; and
- 1637 (ii) the number of gaming machines is not more than twice the number of gaming tables used in the casino, and is not more than 80¹³.

A converted casino premises licence¹⁴ must authorise the holder of the licence either:

- 1638 (A) to make 20 gaming machines available for use on the premises where at least one of the machines is of Category B and provided that each machine is of Category B, C or D; or
- 1639 (B) to make available for use on the premises any number of Category C or Category D gaming machines¹⁵.

A condition¹⁶ of a casino premises licence may relate to the number of machines¹⁷ used on the premises for the purpose of making or accepting bets¹⁸, the nature of those machines and the circumstances in which those machines are made available for use¹⁹.

A casino premises licence must authorise the holder to make facilities available for betting²⁰ on the outcome of a virtual game, race, competition or other event or process²¹.

1 As to the meaning of 'casino premises licence' see PARA 460 at head (1).

2 As to the classification of casinos by regulations see the Gambling Act 2005 s 7(5)-(7) (s 7(5)(a) not in force); and PARA 311. There is no statutory definition of 'regional casino' for these purposes; and at the date at

which this volume states the law, it is not possible to apply for a casino premises licence in respect of such a casino.

3 As to the meaning of 'gaming' see PARA 310. The Secretary of State may by regulations (1) define 'gaming table' for the purposes of the Gambling Act 2005 s 172(3)-(5) (see the text and notes 4-13); (2) provide that a gaming table is to be treated as being used in a casino for the purposes of those provisions only if used for a specified purpose, in specified circumstances, and to a specified extent; (3) provide for a number of tables to be treated as if they were a single gaming table in specified circumstances: s 172(6). At the date at which this volume states the law, no such regulations had been made. As to the Secretary of State see PARA 2.

4 As to the meaning of 'authorise' see PARA 349 note 5.

5 As to the meaning of 'holder' see PARA 486 note 10.

6 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547.

7 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

8 As to categories of gaming machine generally see PARA 548; as to the meaning of 'Category A gaming machine' see PARA 549; as to the meaning of 'Category B gaming machine' see PARA 550; as to the meaning of 'Category C gaming machine' see PARA 551; and as to the meaning of 'Category D gaming machine' see PARA 552. A reference to a Category B gaming machine in s 172(3)(a), (4)(a) and (5)(a) (licensed regional, large and small casinos) it is to be treated as referring to any sub-category of Category B, except sub-category B3A (as to which see PARA 550 at head (4)): Categories of Gaming Machine Regulations 2007, SI 2007/2158, reg 6(3)(b).

9 Gambling Act 2005 s 172(3). See also s 172(10) (see PARA 487 text and notes 11-17); and s 172(11) (see PARA 489 note 5).

10 As to the meaning of 'large casino' see PARA 311.

11 Gambling Act 2005 s 172(4); and see notes 8, 9.

12 As to the meaning of 'small casino' see PARA 311.

13 Gambling Act 2005 s 172(5); and see notes 8, 9.

14 As to the meaning of 'converted casino premises licence' see PARA 460 note 5.

15 See the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 65(6). Despite the lack of parity between the provision made by Sch 4 para 65 in respect of existing casinos and that made under the new regime for casinos under the Gambling Act 2005, a challenge by a trade association which represented over 90% of British casinos (some 125 out of 138 existing casinos), and by member companies who operated 116 casinos between them, on the basis that (1) that the Secretary of State had been constrained by her view of the effect of the 2005 Act to believe wrongly that she had no scope when making the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, to improve the position of existing casinos; (2) that there had been no prior consultation on the relative gambling entitlements of existing and new casinos; and (3) that the Secretary of State was in material error of fact in thinking that very few existing casinos were of sufficient size to qualify under the new licensing regime as small or large casinos, being misled by the regulatory impact assessment, and thereby exercised her powers upon a false basis, was rejected in *R (on the application of British Casino Association Ltd) v Secretary of State for Culture, Media and Sport* [2007] EWHC 1312 (Admin), [2007] LLR 437, [2007] All ER (D) 79 (Jun); the court held that measures had in fact been taken to ameliorate the position of the existing casinos, and it was wrong to view the 2006 order in isolation. Moreover, there had been sufficient consultation and the Secretary of State had not made material errors of fact.

16 For these purposes, 'condition' means a condition imposed by virtue of the Gambling Act 2005 s 167, s 168 or s 169 (see PARAS 484-486): s 181(3).

17 As to the meaning of 'machine' see PARA 493 note 13.

18 As to the meaning of 'accepting a bet' see PARA 312 note 2.

19 Gambling Act 2005 s 181(2).

20 As to the meaning of 'betting' see PARA 312.

21 Gambling Act 2005 s 173(1), (2)(a). As to the meaning of 'virtual game, race, competition or other event or process' see PARA 350 note 8.

UPDATE**460-546 Premises Licences**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

509 Gaming and betting machines; virtual gaming

NOTES 1-13--A wholly automated gaming table is not a 'gaming table for the purposes of the Gambling Act 2005 s 172(3)-(5): Gambling Act 2005 (Gaming Tables in Casinos) (Definitions) Regulations 2009, SI 2009/1970, reg 2. For the purposes of the Gambling Act 2005 s 172(3)-(5), a gaming table is to be treated as being used in a casino at a particular time only if it is (1) being used to play a casino game at that time; or (2) available at that time to be used for that purpose: SI 2009/1970 reg 3. 'Wholly automated gaming table' means an apparatus that is designed or adapted to enable individuals to play a real game of chance where (a) the design or adaptation is such that the apparatus is not required to be controlled or operated by an individual employed or concerned in arranging for others to play the game; and (b) the apparatus is not designed or adapted for use in connection with a game the arrangements for which are controlled or operated by an individual: reg 1(2).

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(vi) Specific Cases/D. BINGO PREMISES LICENCES AND CASINO PREMISES LICENCES/(C) Casino Premises Licences/510. Mandatory conditions attaching to all casino premises licences.

510. Mandatory conditions attaching to all casino premises licences.

The following conditions must be attached to all types of casino premises licences¹:

- 1640 (1) the principal entrance to the premises² must be from a street³, no entrance to the premises must be from premises that are used wholly or mainly by children⁴, by young persons⁵, or by both⁶, and no customer must be able to enter the premises directly from any other premises in respect of which a premises licence⁷, or a family entertainment centre gaming machine permit⁸, a club gaming or club machine permit⁹ or a licensed premises gaming machine permit¹⁰ has effect¹¹;
- 1641 (2) a gap of at least 2 metres must be maintained between any ordinary gaming table¹² and any other equipment, apparatus or structure used by a person to gamble¹³ on the premises¹⁴;
- 1642 (3) no more than 40 separate player positions may be made available for use in relation to wholly automated gaming tables¹⁵ at any time¹⁶;
- 1643 (4) the rules of each type of casino game¹⁷ that is available to be played on the premises must be displayed in a prominent place within both the table gaming area¹⁸ and other gambling area¹⁹ of the premises to which customers wishing to use facilities for gambling have unrestricted access²⁰; and this condition may be satisfied either by displaying a clear and legible sign setting out the rules or by making available to customers leaflets or other written material containing the rules²¹;
- 1644 (5) any ATM²² made available for use on the premises must be located in a place that requires any customer who wishes to use it to cease gambling at any gaming table, gaming machine²³ or betting machine²⁴ in order to do so²⁵.

1 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 4. As to the meaning of 'casino premises licence' see PARA 460 at head (1).

2 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

3 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 1 para 1(1). As to the meaning of 'street' see PARA 495 note 5.

4 As to the meaning of 'child' see PARA 331 note 2.

5 As to the meaning of 'young person' see PARA 353 note 5.

6 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 1 para 1(2).

7 Ie a licence issued under the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9): see PARAS 460 et seq, 516 et seq.

8 Ie a permit issued under the Gambling Act 2005 Sch 10: see PARA 562 et seq.

9 Ie a permit issued under the Gambling Act 2005 Sch 12: see PARA 582 et seq.

10 Ie a permit issued under the Gambling Act 2005 Sch 13: see PARA 570 et seq.

11 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 1 para 1(2).

12 'Ordinary gaming table' means a gaming table that is not a partially or wholly automated gaming table: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 2. As to the meaning of 'wholly automated gaming table' see note 15.

13 As to the meaning of 'gamble' see PARA 308.

14 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 1 para 2.

15 'Wholly automated gaming table' means equipment that would fall within the definition of a gaming machine in the Gambling Act 2005 s 235 (see PARA 547) but for its exclusion from that definition by s 235(2)(i): Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 2.

16 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 1 para 3.

17 As to the meaning of 'casino game' see PARA 311.

18 'Table gaming area', in relation to a casino premises licence, means the area indicated on the plan as being for table gaming; 'the plan', in relation to a premises licence, means the plan of the premises that forms part of the licence by virtue of the Gambling Act 2005 s 151(1)(g) (see PARA 463); and 'table gaming' means (1) casino games played on ordinary, or partially or wholly automated, gaming tables; and (2) real games of equal chance, other than bingo, played on a table: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 2. 'Partially automated gaming table' means equipment that would fall within the definition of gaming machine in the Gambling Act 2005 s 235 (see PARA 547) but for its exclusion from that definition by s 235(2)(h): Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 2. As to the meaning of 'game of chance' see PARA 310; as to the meaning of 'equal chance gaming' see PARA 311 note 4; as to the meaning of 'bingo' see PARA 349 note 8; and as to the meaning of 'real' in the context of a game see PARA 495 note 12.

19 'Gambling area', in relation to a casino premises licence, means those areas of the casino that are indicated on the plan as being the table gaming area, and any other area in which facilities for gambling may be provided: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 2. As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

20 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 1 para 4(1).

21 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 1 para 4(2).

22 As to the meaning of 'ATM' see PARA 490 note 9.

23 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547. As to the numbers and categories of gaming machine permitted for each type of casino see PARA 509.

24 As to the meaning of 'betting machine' see PARA 495 note 12; and as to the numbers, nature and availability of betting machines see PARA 509.

25 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 1 para 5.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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511. Additional mandatory conditions attaching to regional casino premises licences.

In addition to the general mandatory conditions¹, the following conditions must be attached to regional casino² premises licences³:

- 1645 (1) a notice must be displayed in a prominent place at every entrance to the gambling area⁴ of the premises⁵ stating that no person under the age of 18 years is permitted to enter that part of the premises⁶;
- 1646 (2) the gambling area of the premises must not be capable of being seen from any part of the premises to which children⁷, young persons⁸, or both, have access⁹;
- 1647 (3) the premises must contain a table gaming area¹⁰ the floor area of which¹¹ is no less than 1,000 square metres¹² and a non-gambling area¹³ the floor area of which is no less than 1,500 square metres¹⁴; no gambling¹⁵ must be permitted in the table gaming area of the premises other than gambling by way of table gaming¹⁶, facilities for gambling must not be provided¹⁷ in the non-gambling area¹⁸ and at any time during which facilities for gambling are provided on the premises, each separate area comprising the non-gambling area, other than lobby areas and toilet facilities¹⁹, must contain recreational facilities that are available for use by customers on the premises²⁰;
- 1648 (4) a notice must be displayed in a prominent place in each part of the premises used for providing facilities for betting²¹, setting out the terms on which persons are invited to bet on the premises²²;
- 1649 (5) a notice setting out the specified information²³ must be displayed²⁴ in a prominent place at the main point on the premises where payment for the charge is to be made for a game card or set of game cards in respect of a game of bingo²⁵; and the rules of each type of bingo game that is available to be played on the premises must be made available to customers in each part of the premises used for providing facilities for bingo²⁶;
- 1650 (6) no more than 40 separate betting positions may be made available for use in relation to betting machines²⁷ at any time²⁸.

1 As to the general mandatory conditions see PARA 510.

2 As to the classification of casinos by regulations see the Gambling Act 2005 s 7(5)-(7) (s 7(5)(a) not in force); and PARA 311. There is no statutory definition of 'regional casino' for these purposes; and at the date at which this volume states the law, it is not possible to apply for a casino premises licence in respect of such a casino.

3 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 5. As to the meaning of 'casino premises licence' see PARA 460 at head (1).

4 As to the meaning of 'gambling area' see PARA 510 note 19.

5 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

6 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 2 para 1.

- 7 As to the meaning of 'child' see PARA 331 note 2.
- 8 As to the meaning of 'young person' see PARA 353 note 5.
- 9 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 2 para 2.
- 10 As to the meaning of 'table gaming area' see PARA 510 note 18.
- 11 Subject to the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 2 para 3(3), in determining the floor area of the table gaming area, any number of separate areas within the premises may be taken into account: Sch 1 Pt 2 para 3(2). Any separate area that comprises less than 12.5% of the minimum required table gaming area must not, however, be taken into account in determining the table gaming area: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 2 para 3(3).
- 12 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 2 para 3(1).
- 13 The non-gambling area may consist of one or more areas within the premises: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 2 para 4(2). Lobby areas and toilet facilities may be taken into account in calculating the non-gambling area; but the non-gambling area must not consist exclusively of lobby areas and toilet facilities: Sch 1 Pt 2 para 4(3).
- 14 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 2 para 4(1).
- 15 As to the meaning of 'gambling' see PARA 308.
- 16 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 2 para 3(4). As to the meaning of 'table gaming' see PARA 510 note 18.
- 17 As to the meaning of 'providing facilities' for gambling see PARA 309.
- 18 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 2 para 4(4).
- 19 Ie the lobby areas and toilet facilities referred to in the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 2 para 4(3): see note 13.
- 20 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 2 para 4(5).
- 21 As to the meaning of 'betting' see PARA 312.
- 22 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 2 para 5.
- 23 The notice must include the following information: (1) the cost (in money) of each game card (or set of game cards) payable by an individual in respect of a game of bingo; (2) in respect of each game card (or set of game cards) referred to in head (1) above, the maximum amount that will be charged by way of a participation fee for entitlement to participate in that game; and (3) a statement to the effect that all or part of the participation fee may be waived at the discretion of the person charging it: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 2 para 6(2). As to the meaning of 'game card' see PARA 503 note 19; as to the meaning of 'bingo' see PARA 349 note 8; and as to the meaning of 'participation fee' see PARA 370 note 4.
- 24 The notice may be displayed in electronic form: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 2 para 6(3).
- 25 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 2 para 6(1). A reference in Sch 1 Pt 2 para 6 to a charge in respect of gaming does not include an amount paid for an opportunity to win one or more prizes in gaming to which the Gambling Act 2005 s 288 (meaning of 'prize gaming': see PARA 592) applies: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 2 para 6(4). As to the meaning of 'gaming' see PARA 310.

26 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 2 para 6(5). That condition may be satisfied by (1) displaying a sign setting out the rules; (2) making available leaflets or other written material containing the rules; or (3) running an audio-visual guide to the rules prior to any bingo game being commenced: Sch 1 Pt 2 para 6(6).

27 As to the meaning of 'betting machine' see PARA 495 note 12; and as to the numbers, nature and availability of betting machines see PARA 509.

28 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 2 para 7.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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512. Additional mandatory conditions attaching to large casino premises licences.

In addition to the general mandatory conditions¹, the following conditions must be attached to large casino² premises licences³:

- 1651 (1) a notice stating that no person under the age of 18 years is permitted to enter the premises⁴ must be displayed in a prominent place at every entrance to the premises⁵;
- 1652 (2) the premises must contain a table gaming area⁶, the floor area of which⁷ is no less than 1,000 square metres⁸ and a non-gambling area⁹ which comprises no less than 500 square metres¹⁰; no gambling¹¹ must be permitted in the table gaming area of the premises other than gambling by way of table gaming¹², facilities for gambling must not be provided¹³ in the non-gambling area¹⁴ and at any time during which facilities for gambling are being provided on the premises, each separate area comprising of the non-gambling area, other than the lobby areas and toilet facilities¹⁵, must contain recreational facilities that are available for use by customers on the premises¹⁶;
- 1653 (3) a notice must be displayed in a prominent place in each part of the premises used for providing facilities for betting¹⁷, setting out the terms on which persons are invited to bet on the premises¹⁸;
- 1654 (4) a notice setting out the specified information¹⁹ must be displayed²⁰ in a prominent place at the main point on the premises where payment for the charge is to be made for a game card, or set of game cards, in respect of a game of bingo²¹; and the rules of each type of bingo game that is available to be played on the premises must be made available to customers in each part of the premises used for providing facilities for bingo²²;
- 1655 (5) no more than 40 separate betting positions may be made available for use in relation to betting machines²³ at any time²⁴.

1 As to the general mandatory conditions see PARA 510.

2 As to the meaning of 'large casino' see PARA 311.

3 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 6. As to the meaning of 'casino premises licence' see PARA 460 at head (1).

4 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

5 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 3 para 1.

6 As to the meaning of 'table gaming area' see PARA 510 note 18.

7 Subject to the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 3 para 2(3), in determining the floor area of the table gaming area, any number of separate areas within the premises may be taken into account: Sch 1 Pt 3 para 2(2). Any separate area that comprises less than 12.5% of the minimum required table gaming area must not be taken into account in determining the table gaming area: Sch 1 Pt 3 para 2(3).

8 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 3 para 2(1).

9 The non-gambling area may consist of one or more areas within the premises: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 3 para 4(2). Lobby areas and toilet facilities may be taken into account in calculating the non-gambling area; but the non-gambling area must not consist exclusively of lobby areas and toilet facilities: Sch 1 Pt 3 para 4(3).

10 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 3 para 4(1).

11 As to the meaning of 'gambling' see PARA 308.

12 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 3 para 3. As to the meaning of 'table gaming' see PARA 510 note 18.

13 As to the meaning of 'providing facilities' for gambling see PARA 309.

14 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 3 para 4(4).

15 Ie the lobby areas and toilet facilities referred to in the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 3 para 4(3): see note 9.

16 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 3 para 4(5).

17 As to the meaning of 'betting' see PARA 312.

18 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 3 para 5.

19 The notice must include the following information: (1) the cost (in money) of each game card (or set of game cards) payable by an individual in respect of a game of bingo; (2) in respect of each game card (or set of game cards) referred to in head (1) above, the maximum amount that will be charged by way of a participation fee for entitlement to participate in that game; and (3) a statement to the effect that all or part of the participation fee may be waived at the discretion of the person charging it: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 3 para 6(2). As to the meaning of 'game card' see PARA 503 note 19; as to the meaning of 'bingo' see PARA 349 note 8; and as to the meaning of 'participation fee' see PARA 370 note 4.

20 The notice may be displayed in electronic form: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 3 para 6(3).

21 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 3 para 6(1). A reference in Sch 1 Pt 3 para 6 to a charge in respect of gaming does not include an amount paid for an opportunity to win one or more prizes in gaming to which the Gambling Act 2005 s 288 (meaning of 'prize gaming': see PARA 592) applies: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 3 para 6(4). As to the meaning of 'gaming' see PARA 310.

22 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 3 para 6(5). That condition may be satisfied by (1) displaying a sign setting out the rules; (2) making available leaflets or other written material containing the rules; or (3) running an audio-visual guide to the rules prior to any bingo game being commenced: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 3 para 6(6).

23 As to the meaning of 'betting machine' see PARA 495 note 12; and as to the numbers, nature and availability of betting machines see PARA 509.

24 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 3 para 7.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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513. Additional mandatory conditions attaching to small casino premises licences.

In addition to the general mandatory conditions¹, the following conditions must be attached to small casino² premises licences³:

- 1656 (1) a notice stating that no person under the age of 18 years is permitted to enter the premises⁴ must be displayed in a prominent place at every entrance to the premises⁵;
- 1657 (2) the premises must contain a table gaming area⁶ the floor area of which⁷ is no less than 500 square metres⁸ and a non-gambling area⁹ which comprises no less than 250 square metres¹⁰; no gambling¹¹ must be permitted in the table gaming area of the premises other than gambling by way of table gaming¹², facilities for gambling must not be provided¹³ in the non-gambling area¹⁴ and at any time during which facilities for gambling are being provided on the premises, each separate area comprising the non-gambling area, other than the lobby areas and toilet facilities¹⁵, must contain recreational facilities that are available for use by customers on the premises¹⁶;
- 1658 (3) a notice must be displayed in a prominent place in each part of the premises used for providing facilities for betting¹⁷, setting out the terms on which persons are invited to bet on the premises¹⁸;
- 1659 (4) no more than 40 separate betting positions may be made available for use in relation to betting machines¹⁹ at any time²⁰.

1 As to the general mandatory conditions see PARA 510.

2 As to the meaning of 'small casino' see PARA 311.

3 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 7. As to the meaning of 'casino premises licence' see PARA 460 at head (1).

4 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

5 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 4 para 1.

6 As to the meaning of 'table gaming area' see PARA 510 note 18.

7 Subject to the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 4 para 2(3), in determining the floor area of the table gaming area, any number of separate areas within the premises may be taken into account: Sch 1 Pt 4 para 2(2). Any separate area that comprises less than 12.5% of the minimum required table gaming area must not be taken into account in determining the table gaming area: Sch 1 Pt 4 para 2(3).

8 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 4 para 2(1).

9 The non-gambling area may consist of one or more areas within the premises: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 4 para 4(2). Lobby areas and toilet facilities may be taken into account in calculating the non-gambling area; but the non-gambling area must not consist exclusively of lobby areas and toilet facilities: Sch 1 Pt 4 para 4(3).

10 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 4 para 4(1).

11 As to the meaning of 'gambling' see PARA 308.

12 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 4 para 3. As to the meaning of 'table gaming' see PARA 510 note 18.

13 As to the meaning of 'providing facilities' for gambling see PARA 309.

14 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 4 para 4(4).

15 In the lobby areas and toilet facilities referred to in the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 4 para 4(3): see note 9.

16 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 4 para 4(5).

17 As to the meaning of 'betting' see PARA 312.

18 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 4 para 5.

19 As to the meaning of 'betting machine' see PARA 495 note 12; and as to the numbers, nature and availability of betting machines see PARA 509.

20 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 4 para 6.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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514. Additional mandatory conditions attaching to converted casino premises licences.

In addition to the general mandatory conditions¹, the following conditions must be attached to converted casino premises licences²:

- 1660 (1) a notice must be displayed in a prominent place at every entrance to the premises³ stating that no person under the age of 18 years is permitted to enter the premises⁴;
- 1661 (2) if the premises have a gambling area⁵ the floor area of which⁶ is no less than 200 square metres⁷:
- 107 163. (a) the premises must contain a non-gambling area, the floor area of which is no less than 10 per cent of the floor area of the gambling area⁸;
- 164. (b) the non-gambling area may consist of one or more areas within the premises⁹;
- 165. (c) lobby areas and toilet facilities may be taken into account in calculating the non-gambling area; but the non-gambling area must not consist exclusively of lobby areas and toilet facilities¹⁰;
- 166. (d) facilities for gambling must not be provided in the non-gambling area¹¹;
- 167. (e) at any time during which facilities for gambling are being provided on the premises, each separate area comprising the non-gambling area, other than the lobby areas and toilet facilities referred to in head (c) above, must contain recreational facilities that are available for use by customers on the premises¹².

108

1 As to the general mandatory conditions see PARA 510.

2 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 8. 'Converted casino premises licence' means a premises licence issued in respect of a casino in accordance with transitional provisions made under the Gambling Act 2005 Sch 18 para 9: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 2.

3 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

4 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 5 para 1.

5 As to the meaning of 'gambling area' see PARA 510 note 19.

6 In determining the floor area of the gambling area, all areas in which facilities for gambling are provided on the premises must be taken into account: Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 5 para 2(2). As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

7 See the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 5 para 2(1). Such premises are not regional, large or small casinos and thus no minimum size for the premises is prescribed by regulations under the Gambling Act 2005.

8 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 5 para 2(3).

9 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 5 para 2(4).

10 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 5 para 2(5).

11 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 5 para 2(6).

12 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 5 para 2(7).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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515. Default conditions attaching to casino premises licences.

The following conditions must be attached to casino premises licences¹ unless excluded by the licensing authority² which issues the licence, in exercise of its statutory powers³ to do so⁴, namely that no facilities for gambling must be provided⁵ on the premises⁶ between the hours of 6 am and noon on any day⁷.

1 As to the meaning of 'casino premises licence' see PARA 460 at head (1).

2 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468. A licensing authority may resolve not to issue casino premises licences: see the Gambling Act 2005 s 166; and PARA 465. As to the licensing authorities with power to issue large and small casino premises licences see PARA 506 note 9. At the date at which this volume states the law, no authority had power to issue a regional casino premises licence.

3 le under the Gambling Act 2005 s 169(1)(b): see PARA 486.

4 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, reg 9.

5 As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

6 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

7 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007/1409, Sch 1 Pt 6.

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460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(vii) Maintenance of Licences

516. Annual fee.

The holder¹ of a premises licence² must pay:

- 1662 (1) a first annual fee³ to the licensing authority⁴ within such period after the issue of the licence as may be prescribed⁵; and
- 1663 (2) an annual fee to the licensing authority before each anniversary of the issue of the licence⁶.

Head (2) above does not, however, apply in relation to an anniversary of the issue of a licence on or immediately before which the licence expires in accordance with regulations made by the Secretary of State⁷ prescribing the duration of a premises licence⁸.

The Secretary of State may by regulations:

- 1664 (a) require a licensing authority to refund a prescribed part of an annual fee paid under these provisions where a premises licence ceases to have effect otherwise than on or immediately before an anniversary of its issue⁹;
- 1665 (b) require a licensing authority to refund a prescribed part of an annual fee paid under these provisions if a premises licence is altered¹⁰ and the annual fee for the licence as altered is less than the annual fee for the licence before alteration¹¹; and
- 1666 (c) require a licensee¹² to pay an additional amount by way of annual fee if a premises licence is altered¹³ and the annual fee for the licence as altered is more than the annual fee for the licence before alteration¹⁴.

1 As to the meaning of 'holder' see PARA 486 note 10.

2 As to the meaning of 'premises licence' see PARA 460 note 1.

3 For these purposes, 'annual fee' means a fee of such amount as may be prescribed; and 'prescribed' means prescribed by regulations made, in relation to premises licences issued by authorities in England and Wales, by the Secretary of State: Gambling Act 2005 s 184(2)(a). Regulations prescribing the annual fee may, in particular, make different provision for licences authorising different classes of activity, or different circumstances: s 184(3). As to the Secretary of State see PARA 2.

The amount of the first annual fee for a premises licence must be determined by the relevant licensing authority, but the amount of that fee must not exceed the amount of the annual fee for the licence as determined in accordance with reg 8 (see note 6): Gambling (Premises Licence Fees) (England and Wales) Regulations 2007, SI 2007/479, reg 6(1), (2). The amount of the annual fee for the licence is to be determined as at the date by which the first annual fee is payable, and as if the annual fee were payable by that date: reg 6(3). Regulation 6 is subject to reg 9: reg 6(4). 'Relevant licensing authority' means, in relation to the first annual fee or annual fee in respect of a premises licence, the licensing authority which issued the licence: reg 2(1). As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

Where a premises licence is subject to a seasonal condition, the relevant licensing authority may determine a first annual fee, and an annual fee, for the licence that are less than the first annual fee and annual fee respectively that would otherwise be payable in respect of the licence: reg 9(1). 'Seasonal condition' means a condition attached to a licence by a licensing authority under the Gambling Act 2005 s 169(1)(a) (see PARA 486) which provides that the premises to which the licence relates may be used for the activities specified in the

licence for part of a year only: Gambling (Premises Licence Fees) (England and Wales) Regulations 2007, SI 2007/479, reg 9(2).

4 'The licensing authority', in relation to a premises licence, means the authority which issued the licence: Gambling Act 2005 s 213(f).

5 Gambling Act 2005 s 184(1)(a). Where a licence comes into effect on the issue date, the first annual fee for the licence must be paid within 30 days after that date: Gambling (Premises Licence Fees) (England and Wales) Regulations 2007, SI 2007/479, reg 7(1). Where a licence specifies that it is to come into effect on an effective date, then unless the licence was issued before 1 September 2007, the first annual fee for the licence must be paid within (1) the relevant period; or (2) 12 months, after the issue date, whichever is sooner: see reg 7(2), (3). 'The effective date', in relation to a licence which specifies that it is to come into effect on a date after the issue date, means the date so specified; 'the issue date' means the date on which a licence is issued; and 'the relevant period', in relation to a licence, means the period which is equal to the sum of (a) the period between the issue date and the effective date; and (b) 30 days: reg 7(4).

6 Gambling Act 2005 s 184(1)(b). The amount of the annual fee for a premises licence must be determined by the relevant licensing authority (Gambling (Premises Licence Fees) (England and Wales) Regulations 2007, SI 2007/479, reg 8(1)); but the amount of that fee must not exceed the amount specified in Schedule, Table col 5 which is opposite the class of premises licence in Schedule, Table col 1 to which the fee relates (reg 8(2)). This is subject to reg 9 (see note 3): reg 8(3). As to the prescribed classes of premises licence see reg 3(1).

7 The regulations under the Gambling Act 2005 s 191(1): see PARA 522.

8 Gambling Act 2005 s 184(6).

9 Gambling Act 2005 s 184(4)(a).

10 The regulations under the Gambling Act 2005 s 186, s 187, s 188 or s 202: see PARAS 518, 520-521, 531.

11 Gambling Act 2005 s 184(4)(b).

12 As to the meaning of 'licensee' see PARA 478 note 3.

13 See note 10.

14 Gambling Act 2005 s 184(4)(b).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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517. Availability of licence.

The holder¹ of a premises licence² must keep the licence on the premises³, and must arrange for the licence to be made available on request to a constable⁴, an enforcement officer⁵, or an authorised local authority officer⁶. A person commits an offence if he fails without reasonable excuse to comply with these requirements⁷.

1 As to the meaning of 'holder' see PARA 486 note 10.

2 As to the meaning of 'premises licence' see PARA 460 note 1.

3 Gambling Act 2005 s 185(1)(a). As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

4 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

5 As to the meaning of 'enforcement officer' see PARA 342 note 7.

6 Gambling Act 2005 s 185(1)(b). In the Gambling Act 2005, a reference to an authorised local authority officer is a reference to a person who is an authorised person by virtue of s 304(2): ss 304(1)(b), 353(1). An officer of a licensing authority is an authorised person for a purpose relating to premises if (1) the premises are wholly or partly situated in the authority's area; and (2) the officer is designated by the authority as an authorised person for the purposes of s 304 (see PARA 601): s 304(2).

7 Gambling Act 2005 s 185(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 185(3). As to the standard scale see PARA 17 note 21. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684. A licensing authority may institute criminal proceedings in respect of such an offence: see s 346(1)(b); and PARA 345.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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518. Change of circumstance.

If the holder¹ of a premises licence² ceases to reside or attend at the address specified in the licence³ he must as soon as is reasonably practicable notify⁴ the licensing authority⁵, and inform the licensing authority of a home or business address at which he resides or attends⁶. The Secretary of State⁷ may make regulations requiring the holder of a premises licence to notify the licensing authority of any change of circumstance of a prescribed⁸ kind in relation to him or to an authorised activity⁹ and to give the licensing authority prescribed details of the change¹⁰. The holder of a premises licence commits an offence if he fails without reasonable excuse to comply with a provision set out above¹¹ or with a provision of regulations made under these provisions¹².

If a change of circumstance notified under or by virtue of these provisions falsifies information contained in the premises licence¹³, the notification must be accompanied by the prescribed fee¹⁴, and by either the licence or an application¹⁵ for a copy of the licence¹⁶. Where notification is accompanied by the licence, the licensing authority must make such alteration to the information contained in the licence as appears to the authority to be required by the change in circumstance, and must return the licence to the licensee¹⁷. Where the notification is accompanied by an application for a copy of the licence, the licensing authority must, if it grants the application, issue the copy in a form which appears to the authority to reflect the change in circumstance¹⁸.

The above provisions do not prevent the imposition of a requirement to notify the licensing authority of a specified change of circumstance by way of the attachment of a condition to a premises licence¹⁹.

1 As to the meaning of 'holder' see PARA 486 note 10.

2 As to the meaning of 'premises licence' see PARA 460 note 1.

3 I.e. the address specified in the licence under the Gambling Act 2005 s 151(1)(b): see PARA 463.

4 As to the method of notification see PARA 356 note 5.

5 As to the meaning of 'the licensing authority' for these purposes see PARA 516 note 4; as to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

6 Gambling Act 2005 s 186(1).

7 As to the Secretary of State see PARA 2.

8 'Prescribed' means prescribed by regulations made by the Secretary of State: Gambling Act 2005 s 213(g).

9 'Authorised activity', in relation to a premises licence, means an activity specified under the Gambling Act 2005 s 151(1)(d) (see PARA 463): s 213(a).

10 Gambling Act 2005 s 186(2). At the date at which this volume states the law, no such regulations had been made.

11 I.e. a provision of the Gambling Act 2005 s 186.

12 Gambling Act 2005 s 186(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 186(7). As to the standard scale see PARA 17 note 21. As to time

limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684. A licensing authority may institute criminal proceedings in respect of such an offence: see s 346(1)(c); and PARA 345.

13 le contained in the licence in accordance with the Gambling Act 2005 s 151: see PARA 463.

14 For these purposes, 'prescribed' means, in relation to notification given to authorities in England and Wales, prescribed by regulations made by the Secretary of State: Gambling Act 2005 s 186(9)(a). The fee to accompany a notification of a change of circumstance must be determined by the relevant licensing authority, but the amount of that fee must not exceed £50: Gambling (Premises Licence Fees) (England and Wales) Regulations 2007, SI 2007/479, reg 10(1), (2). For these purposes, 'the relevant licensing authority' means the licensing authority which issued the licence: reg 2(1).

15 le an application under the Gambling Act 2005 s 190: see PARA 519.

16 Gambling Act 2005 s 186(3).

17 Gambling Act 2005 s 186(4). As to the meaning of 'licensee' see PARA 478 note 3.

18 Gambling Act 2005 s 186(5).

19 Gambling Act 2005 s 186(8).

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460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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519. Copy of licence.

Where a premises licence¹ issued², or a summary given³, is lost, stolen or damaged, the licensee⁴ may apply to the licensing authority⁵ for a copy⁶. Such an application must be accompanied by the prescribed⁷ fee⁸.

A licensing authority must consider an application under these provisions as soon as is reasonably practicable and must grant it if satisfied:

- 1667 (1) that the licence or summary to which the application relates has been lost, stolen or damaged; and
- 1668 (2) where the licence or summary has been lost or stolen, that the loss or theft has been reported to the police⁹.

As soon as is reasonably practicable after granting such an application, a licensing authority must issue a copy of the licence or summary to the applicant certified by the authority as a true copy, and in, or in relation to, the form in which the licence had effect before the loss, theft or damage¹⁰. A copy of a licence or summary so issued must be treated as if it were the licence or summary¹¹.

1 As to the meaning of 'premises licence' see PARA 460 note 1.

2 Ie under the Gambling Act 2005 s 164: see PARA 483.

3 See note 2.

4 As to the meaning of 'licensee' see PARA 478 note 3.

5 As to the meaning of 'the licensing authority' for these purposes see PARA 516 note 4; as to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

6 Gambling Act 2005 s 190(1).

7 For these purposes, 'prescribed' means, in relation to applications to authorities in England and Wales, prescribed by regulations made by the Secretary of State: Gambling Act 2005 s 190(6)(a). As to the Secretary of State see PARA 2.

8 Gambling Act 2005 s 190(2). The amount of the application fee for an application for a copy of a licence under s 190(1) must be determined by the relevant licensing authority, but the amount of that fee must not exceed £25: Gambling (Premises Licence Fees) (England and Wales) Regulations 2007, SI 2007/479, reg 13(1), (2). For these purposes, 'the relevant licensing authority' means the licensing authority which issued the licence: reg 2(1).

9 Gambling Act 2005 s 190(3).

10 Gambling Act 2005 s 190(4).

11 Gambling Act 2005 s 190(5).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(vii) Maintenance of Licences/520. Application to vary a premises licence.

520. Application to vary a premises licence.

The holder¹ of a premises licence² may apply to the licensing authority³ to vary the licence by:

- 1669 (1) adding, amending or removing an authorised activity⁴;
- 1670 (2) amending another detail of the licence;
- 1671 (3) excluding a default condition attached⁵ to the licence; or
- 1672 (4) adding, amending or removing a condition attached to the licence by the licensing authority under its discretionary powers⁶ to do so⁷.

A licence may not, however, be varied under these provisions so as to relate to premises⁸ to which it did not previously relate⁹; but this restriction does not apply to a converted casino premises licence¹⁰.

The provisions of Part 8 of the Gambling Act 2005¹¹ apply in relation to an application for variation as they apply in relation to an application for a premises licence, subject to these provisions and with any other necessary modifications¹².

Regulations under that Part which relate to an application for a premises licence may make:

- 1673 (a) provision which applies only in the case of an application for variation¹³;
- 1674 (b) provision which does not apply in the case of an application for variation¹⁴;
- 1675 (c) different provision in relation to an application for variation from that made in relation to an application for a premises licence¹⁵;
- 1676 (d) different provision in relation to applications for variations of different kinds¹⁶.

An application for variation must, in addition to anything required by the statutory provision relating to applications generally¹⁷, be accompanied by:

- 1677 (i) a statement of the variation sought¹⁸; and
- 1678 (ii) either the licence to be varied, or both a statement explaining why it is not reasonably practicable to produce the licence, and an application¹⁹ for the issue of a copy of the licence²⁰.

It must also be accompanied by the prescribed fee²¹.

In granting an application for variation a licensing authority must specify a time when the variation is to begin to have effect, and may make transitional provision²².

1 As to the meaning of 'holder' see PARA 486 note 10.

2 As to the meaning of 'premises licence' see PARA 460 note 1.

3 As to the meaning of 'the licensing authority' for these purposes see PARA 516 note 4; as to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

- 4 As to the meaning of 'authorised activity' see PARA 518 note 9.
- 5 le by virtue of the Gambling Act 2005 s 168: see PARA 485.
- 6 le under the Gambling Act 2005 s 169: see PARA 486.
- 7 See the Gambling Act 2005 s 187(1). For the prescribed form and content of the application see the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, regs 7, 11, Sch 2; and as to the manner of making the application see PARA 471 note 25.
- 8 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.
- 9 Gambling Act 2005 s 187(2).
- 10 The licence holder may apply under the Gambling Act 2005 s 187 to vary a converted casino premises licence so that it relates to premises which are different from those to which it previously related, and s 187(2) (which prohibits a premises licence from being varied so as to relate to premises to which it did not previously relate) is accordingly not to have effect in relation to a converted casino premises licence: Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 65(12). Where a converted casino premises licence is varied to relate to premises to which it did not previously relate, those premises must be wholly or partly situated in the area of the licensing authority which issued the licence: Sch 4 para 65(13). As to the meaning of 'converted casino premises licence' see PARA 460 note 5; and as to the provisions of Sch 4 para 65 see further *R (on the application of British Casino Association Ltd) v Secretary of State for Culture, Media and Sport* [2007] EWHC 1312 (Admin), [2007] LLR 437, [2007] All ER (D) 79 (Jun), cited in PARA 509 note 15.
- 11 le the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9): see PARAS 460 et seq, 521 et seq.
- 12 Gambling Act 2005 s 187(3).
- 13 Gambling Act 2005 s 187(4)(a); and see notes 7, 21.
- 14 Gambling Act 2005 s 187(4)(b).
- 15 Gambling Act 2005 s 187(4)(c); and see notes 7, 21.
- 16 Gambling Act 2005 s 187(4)(d).
- 17 le the Gambling Act 2005 s 159: see PARA 471.
- 18 Gambling Act 2005 s 187(5).
- 19 le under the Gambling Act 2005 s 190: see PARA 519.
- 20 Gambling Act 2005 s 187(6).
- 21 See the Gambling Act 2005 s 159(6)(c), applied by s 187(3). The amount of the application fee for an application to vary a licence under s 187(1) must be determined by the relevant licensing authority, but the amount of that fee must not exceed the amount specified in the Gambling (Premises Licence Fees) (England and Wales) Regulations 2007, SI 2007/479, Schedule, Table col 6 which is opposite the class of premises licence in Schedule, Table col 1 to which the application relates: reg 11(1), (2). As to the prescribed classes of premises licence see reg 3(1). 'Relevant licensing authority' means the licensing authority which issued the premises licence: reg 2(1).
- 22 Gambling Act 2005 s 187(7).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

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521. Transfer of a premises licence.

A person may apply to a licensing authority¹ for a premises licence² to be transferred to him³. The provisions of Part 8 of the Gambling Act 2005⁴ apply in relation to an application for transfer as they apply in relation to an application for a premises licence subject to the following provisions⁵ and with any other necessary modifications⁶.

An application for transfer must, in addition to anything required by the statutory provision relating to applications generally⁷:

- 1679 (1) specify the time when the transfer is to take effect⁸;
- 1680 (2) be accompanied by a written statement by the licensee⁹ consenting to the transfer¹⁰;
- 1681 (3) be accompanied by the licence, or by both a statement explaining why it is not reasonably practicable to produce the licence, and an application by the licensee¹¹ for the issue of a copy of the licence¹².

It must also be accompanied by the prescribed fee¹³.

If, however, an application for transfer states that the applicant has failed to contact the licensee having taken all reasonable steps to do so, the licensing authority must either:

- 1682 (a) disapply head (2) above and take all reasonable steps to notify¹⁴ the licensee; or
- 1683 (b) determine not to disapply head (2) above and notify the applicant of its determination and the reasons for it¹⁵.

Regulations with regard to notice of applications¹⁶ may require notice to be given to specified responsible authorities¹⁷ and not to all responsible authorities¹⁸; and interested parties¹⁹ have no statutory right to make representations in writing to the licensing authority with regard to the application²⁰.

If an application for the transfer of a premises licence includes a request that this provision is to apply, the licence has effect as if the applicant for transfer were the licensee during the period beginning with the receipt of the application for transfer by the licensing authority, and ending with the determination of the application by the licensing authority²¹.

A licensing authority must grant an application for transfer unless it thinks it would be wrong to do so having regard to representations made²² by the responsible authorities in relation to the premises²³. On the grant of an application for the transfer of a premises licence the licensing authority must:

- 1684 (i) alter the licence so that the applicant for the transfer becomes the licensee;
- 1685 (ii) specify in the licence the time when the transfer takes effect, being either the time specified in the application under head (1) above or, if later, the time when the application is granted; and
- 1686 (iii) make such other alteration of the licence as appears to the authority to be required, which may, in particular, include an alteration to reflect a decision of the

authority²⁴ to make new or varied provision for the attachment or exclusion of conditions²⁵.

A licence to which a condition is attached²⁶ for the purpose of giving effect to an agreement²⁷ entered into at the second stage of consideration of an application for a casino premises licence²⁸ of a kind in respect of which an overall limit²⁹ has effect ('the original agreement'), may not, however, be transferred unless:

1687 (A) the transferee enters into an agreement ('the new agreement') which appears to the licensing authority to have substantially the same effect as the original agreement; and

1688 (B) the condition is altered so as to give effect to the new agreement³⁰.

1 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

2 As to the meaning of 'premises licence' see PARA 460 note 1.

3 Gambling Act 2005 s 188(1). For the prescribed form and content of the application see the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, regs 8, 11, Sch 3; and as to the manner of making the application see PARA 471 note 25.

4 Ie the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9): see PARAS 460 et seq, 522 et seq.

5 Ie subject to the Gambling Act 2005 ss 188, 189: see the text and notes 6-30.

6 Gambling Act 2005 s 188(2).

7 Ie required by the Gambling Act 2005 s 159: see PARA 471.

8 Gambling Act 2005 s 188(3)(a).

9 As to the meaning of 'licensee' see PARA 478 note 3.

10 Gambling Act 2005 s 188(3)(b).

11 Ie an application under the Gambling Act 2005 s 190: see PARA 519.

12 Gambling Act 2005 s 189(2). See also note 15.

13 See the Gambling Act 2005 s 159(6)(c), applied by s 188(2). The amount of the application fee for an application to vary a licence under s 187(1) must be determined by the relevant licensing authority, but the amount of that fee must not exceed the amount specified in the Gambling (Premises Licence Fees) (England and Wales) Regulations 2007, SI 2007/479, Schedule, Table col 7 which is opposite the class of premises licence in Schedule, Table col 1 to which the application relates: reg 12(1), (2). As to the prescribed classes of premises licence see reg 3(1). 'Relevant licensing authority' means the licensing authority which issued the premises licence: reg 2(1).

14 As to the method of notification see PARA 356 note 5.

15 Gambling Act 2005 s 189(1). In relation to an application for transfer to which s 189(1) applies, for the purposes of any application under s 190 required in accordance with s 189(2)(b)(ii) (see head (3) in the text), the application under s 190 must be made by the applicant for transfer, and a reference to the licence being lost, stolen or damaged is to be treated as a reference to the licence being unavailable to the applicant for transfer: s 189(3).

16 Ie regulations under the Gambling Act 2005 s 160 (see PARA 472), as they have effect in relation to applications for transfer by virtue of s 188(2) (see the text and notes 4-6).

17 As to the meaning of 'responsible authority' see PARA 472 note 5.

18 Gambling Act 2005 s 189(4).

- 19 As to the meaning of 'interested party' see PARA 473 note 3.
- 20 See the Gambling Act 2005 s 189(5), which provides that s 161 (see PARA 473) is to have effect in relation to an application for transfer with the omission of the reference to interested parties.
- 21 Gambling Act 2005 s 189(6).
- 22 Ie under the Gambling Act 2005 s 161 (see PARA 473), as applied by s 188(2); and see note 20.
- 23 See the Gambling Act 2005 s 188(4).
- 24 Ie under the Gambling Act 2005 s 169 (see PARA 486) as applied by s 188(2).
- 25 Gambling Act 2005 s 188(5).
- 26 Ie under the Gambling Act 2005 s 169: see PARA 486.
- 27 Ie an agreement under the Gambling Act 2005 Sch 9 para 5(3)(b): see PARA 507.
- 28 As to the meaning of 'casino premises licence' see PARA 460 at head (1).
- 29 Ie a limit under the Gambling Act 2005 s 175: see PARA 506.
- 30 See the Gambling Act 2005 s 188(6).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(viii) Duration of Licences

522. Initial duration of premises licence.

The Secretary of State¹ may by regulations prescribe a period at the end of which premises licences² expire, unless they cease to have effect earlier in accordance with a provision of Part 8³ of the Gambling Act 2005⁴. Such regulations may make provision:

- 1689 (1) about renewal and may, in particular, apply or make provision similar to any provision of Part 8 of the 2005 Act about an application for a premises licence⁵;
- 1690 (2) which applies to licences issued before the regulations are made⁶.

If the Secretary of State does not so prescribe a period in respect of a premises licence, it continues to have effect unless and until it ceases to have effect in accordance with a provision of Part 8 of the 2005 Act⁷. At the date at which this volume states the law, no regulations had been made prescribing such a period.

1 As to the Secretary of State see PARA 2.

2 As to the meaning of 'premises licence' see PARA 460 note 1.

3 I.e. the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9): see PARAS 460 et seq, 522 et seq.

4 Gambling Act 2005 s 191(1).

5 Gambling Act 2005 s 191(2).

6 Gambling Act 2005 s 191(3).

7 Gambling Act 2005 s 191(4).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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523. Surrender of premises licence.

A premises licence¹ ceases to have effect if the licensee² notifies³ the licensing authority⁴ of his intention to surrender the licence, and gives the licensing authority either the licence, or a written statement explaining why it is not reasonably practicable to produce the licence⁵.

As soon as is reasonably practicable after receipt of such notification the licensing authority must notify:

- 1691 (1) the Gambling Commission⁶;
- 1692 (2) in England and Wales, the chief officer of police for any area⁷ in which the premises⁸ are wholly or partly situated; and
- 1693 (3) the Commissioners for Revenue and Customs⁹.

1 As to the meaning of 'premises licence' see PARA 460 note 1.

2 As to the meaning of 'licensee' see PARA 478 note 3.

3 As to the method of notification see PARA 356 note 5.

4 As to the meaning of 'the licensing authority' for these purposes see PARA 516 note 4; as to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

5 Gambling Act 2005 s 192(1).

6 As to the Gambling Commission see PARA 4.

7 As to the meaning of references to the chief officer of police and his area see PARA 483 note 6; and as to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

8 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

9 Gambling Act 2005 s 192(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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524. Revocation of licence for failure to pay fee.

Where the holder¹ of a premises licence² fails to pay the annual fee³, the licensing authority⁴ must revoke the licence⁵. The licensing authority may, however, disapply that requirement if it thinks that a failure to pay is attributable to administrative error⁶.

1 As to the meaning of 'holder' see PARA 486 note 10.

2 As to the meaning of 'premises licence' see PARA 460 note 1.

3 In accordance with regulations under the Gambling Act 2005 s 184: see PARA 516.

4 As to the meaning of 'the licensing authority' for these purposes see PARA 516 note 4; as to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

5 Gambling Act 2005 s 193(1).

6 Gambling Act 2005 s 193(2).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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525. Lapse of premises licence.

In the case of a premises licence¹ issued to an individual, the licence lapses if:

- 1694 (1) the licensee² dies;
- 1695 (2) the licensee becomes, in the opinion of the licensing authority³ as notified⁴ to the licensee, incapable of carrying on the licensed activities by reason of mental or physical incapacity;
- 1696 (3) the licensee becomes bankrupt⁵ or, in Scotland, sequestration of the licensee's estate⁶ is awarded⁷.

In any other case a premises licence lapses if the licensee either ceases to exist or goes into liquidation⁸.

If a licensing authority becomes aware that a premises licence issued by the authority has lapsed, the authority must as soon as is reasonably practicable notify:

- 1697 (a) the Gambling Commission⁹;
- 1698 (b) in England and Wales, the chief officer of police for any area¹⁰ in which the premises¹¹ are wholly or partly situated; and
- 1699 (c) the Commissioners for Revenue and Customs¹².

1 As to the meaning of 'premises licence' see PARA 460 note 1.

2 As to the meaning of 'licensee' see PARA 478 note 3.

3 As to the meaning of 'the licensing authority' for these purposes see PARA 516 note 4; as to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

4 As to the method of notification see PARA 356 note 5.

5 Ie within the meaning of the Insolvency Act 1986 s 381: see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 84.

6 Ie under the Bankruptcy (Scotland) Act 1985 s 12(1).

7 Gambling Act 2005 s 194(1).

8 Gambling Act 2005 s 194(2). The reference in the text to going into liquidation is a reference to going into liquidation within the meaning of the Insolvency Act 1986 s 247(2) (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 9); see the Gambling Act 2005 s 194(2)(b).

9 As to the Gambling Commission see PARA 4.

10 As to the meaning of references to the chief officer of police and his area see PARA 483 note 6; and as to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

11 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

12 Gambling Act 2005 s 194(3) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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526. Reinstatement of premises licence.

Where a premises licence¹ lapses², a person may apply to the licensing authority³, during the period of six months beginning with the date of the lapse of the premises licence, for the licence to be reinstated with the applicant as the licensee⁴. The provisions of Part 8 of the Gambling Act 2005⁵ apply in relation to an application for reinstatement as they apply in relation to an application for a premises licence, subject to the following provisions⁶ and with any other necessary modifications⁷.

An application for reinstatement must, in addition to anything required by the statutory provision relating to applications generally⁸:

- 1700 (1) request that the reinstatement take effect upon the application being granted⁹;
- 1701 (2) be accompanied by the licence, or by both a statement explaining why it is not reasonably practicable to produce the licence, and an application¹⁰ for the issue of a copy of the licence¹¹.

It must also be accompanied by the prescribed fee¹².

Regulations with regard to notice of applications¹³ may require notice to be given to specified responsible authorities¹⁴ and not to all responsible authorities¹⁵; and interested parties¹⁶ have no statutory right to make representations in writing to the licensing authority with regard to the application¹⁷.

Where an application is made under the above provisions for the reinstatement of a premises licence, the licence has effect as if the applicant for reinstatement were the licensee during the period beginning with the receipt of the application for reinstatement by the licensing authority, and ending with the determination of the application by the licensing authority¹⁸.

A licensing authority must grant an application for reinstatement unless it thinks it would be wrong to do so having regard to representations made¹⁹ by the responsible authorities in relation to the premises²⁰. On the grant of an application for the reinstatement of a premises licence the licensing authority must:

- 1702 (a) alter the licence so that the applicant for reinstatement becomes the licensee;
- 1703 (b) specify in the licence that the reinstatement takes effect at the time when the application is granted; and
- 1704 (c) make such other alteration of the licence as appears to the authority to be required, which may, in particular, include an alteration to reflect a decision of the authority²¹ to make new or varied provision for the attachment or exclusion of conditions²².

1 As to the meaning of 'premises licence' see PARA 460 note 1.

2 ie under the Gambling Act 2005 s 194: see PARA 525.

3 As to the meaning of 'the licensing authority' for these purposes see PARA 516 note 4; as to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

4 Gambling Act 2005 s 195(1), (2). As to the meaning of 'licensee' see PARA 478 note 3. For the prescribed form and content of the application see the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, SI 2007/459, regs 9, 11, Sch 4; and as to the manner of making the application see PARA 471 note 25.

5 le the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9): see PARAS 460 et seq, 527 et seq.

6 le subject to the Gambling Act 2005 ss 195, 196: see the text and notes 7-22.

7 Gambling Act 2005 s 195(3).

8 le required by the Gambling Act 2005 s 159: see PARA 471.

9 Gambling Act 2005 s 195(4).

10 le an application under the Gambling Act 2005 s 190: see PARA 519.

11 Gambling Act 2005 s 196(1). In the case of an application under s 190 made in accordance with s 196(1)(b)(ii) (see head (2) in the text), the application must be made by the applicant for reinstatement, and a reference to the licence being lost, stolen or damaged is to be treated as a reference to the licence being unavailable to the applicant for reinstatement: s 196(2).

12 See the Gambling Act 2005 s 159(6)(c), applied by s 195(3). The amount of the application fee for an application to vary a licence under s 195(2) must be determined by the relevant licensing authority, but the amount of that fee must not exceed the amount specified in the Gambling (Premises Licence Fees) (England and Wales) Regulations 2007, SI 2007/479, Schedule, Table col 8 which is opposite the class of premises licence in Schedule, Table col 1 to which the application relates: reg 14(1), (2). As to the prescribed classes of premises licence see reg 3(1). 'Relevant licensing authority' means the licensing authority which issued the premises licence: reg 2(1).

13 le regulations under the Gambling Act 2005 s 160 (see PARA 472), as they have effect in relation to applications for reinstatement by virtue of s 195(3) (see the text and notes 5-7).

14 As to the meaning of 'responsible authority' see PARA 472 note 5.

15 Gambling Act 2005 s 196(3).

16 As to the meaning of 'interested party' see PARA 473 note 3.

17 See the Gambling Act 2005 s 196(4), which provides that s 161 (see PARA 473) is to have effect in relation to an application for reinstatement with the omission of the reference to interested parties.

18 Gambling Act 2005 s 196(5).

19 le under the Gambling Act 2005 s 161 (see PARA 473), as applied by s 195(3); and see note 17.

20 See the Gambling Act 2005 s 195(5).

21 le under the Gambling Act 2005 s 169 (see PARA 486) as applied by s 195(3).

22 Gambling Act 2005 s 195(6).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(ix) Review of Premises Licence/527. Application for review.

(ix) Review of Premises Licence

527. Application for review.

A responsible authority¹ or interested party² may apply to the licensing authority³ for a review by the authority of a premises licence⁴. An application must:

- 1705 (1) be made in the prescribed⁵ form and manner⁶;
- 1706 (2) specify the grounds on which the review is sought⁷; and
- 1707 (3) contain or be accompanied by the prescribed information or documents⁸.

The Secretary of State⁹ may make regulations requiring an applicant:

- 1708 (a) to give notice of his application to the licensee¹⁰;
- 1709 (b) to give notice of his application to the responsible authorities in relation to the premises¹¹;

and requiring the licensing authority to which an application is made under these provisions to publish notice of the application¹². Regulations¹³ must include provision:

- 1710 (i) about the manner and form in which notice is to be published or given¹⁴;
- 1711 (ii) about the period of time within which notice is to be published or given¹⁵;
- and
- 1712 (iii) for the consequences of failure to comply with the regulations¹⁶.

Where a person who is making an application fails to give proper notice of the application¹⁷, within the prescribed period¹⁸, to the person holding the premises licence or to a responsible authority, the applicant must give notice to that person or the authority in a form and manner which complies with the prescribed requirements¹⁹, other than the requirements as to the period within which the notice is to be given, as soon as practicable after the end of the prescribed period²⁰. In such a case the person holding the premises licence or, as the case may be, the responsible authority concerned may make any representations about the application within the period of 28 days starting on the day on which that notice is received²¹. The licensing authority may not grant the application until notice has been so given by the applicant and that period of 28 days has elapsed²². Subject to that, the licensing authority may disregard any irregularity in relation to the giving of notice of the application²³.

Where a licensing authority to which an application is made fails to publish a proper notice of the application²⁴ during or for the period provided for²⁵, the licensing authority must publish notice of the application in a form and manner which complies with the prescribed requirements²⁶, other than as to the beginning of the period when publication is to be made, as soon as practicable after the end of the prescribed period²⁷. In such a case an interested party may make any representations about the application within the period of 28 days starting on the day on which that notice is published²⁸. The licensing authority may not grant the application until notice has been so published and that 28-day period has elapsed²⁹. Subject to that, the licensing authority may disregard any irregularity in relation to the publication of a notice³⁰ of the application³¹.

1 As to the meaning of 'responsible authority' see PARA 472 note 5.

2 As to the meaning of 'interested party' see PARA 473 note 3.

3 As to the meaning of 'the licensing authority' for these purposes see PARA 516 note 4; as to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

4 Gambling Act 2005 s 197(1).

5 As to the meaning of 'prescribed' see PARA 518 note 8.

6 Gambling Act 2005 s 197(2)(a). For the prescribed form of application see the Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, regs 3, 14, Sch 1. An application for a review, a notice under reg 4 (see note 10) or a notice under the Gambling Act 2005 s 200(3)(a) (see PARA 529) must be made or given in writing: Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 12(1). For these purposes, an application or notice which is sent by facsimile transmission or electronic mail is to be treated as being made or given in writing if it meets the conditions in reg 12(3): reg 12(2). The conditions are that (1) the text of the application or notice is capable of being accessed by the recipient, is legible in all material respects, and is capable of being read and reproduced in written form and used for subsequent reference by the recipient; and (2) the person to whom the application or notice is to be made or given has agreed in advance that an application or notice may be made or given by the particular electronic means used: reg 12(3). Subject to reg 12(5), where an application or notice is sent by facsimile transmission or electronic mail, it is to be treated as having been made or given at the time the conditions specified in reg 12(3)(a) (see head (1) above) are satisfied: reg 12(4). Where a person making an application specifies a document in the application as being a document which accompanies the application, and the document has been sent in a form that does not meet the conditions in reg 12(3), the application is not to be treated as having been made until any such document has been received by the licensing authority in hard copy (reg 12(5)); and any reference in reg 12(5) to a document in hard copy is to a written document or a document in the form of a plan (reg 12(6)).

7 Gambling Act 2005 s 197(2)(b).

8 Gambling Act 2005 s 197(2)(c). For the prescribed content of the application see the Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, regs 3, 14, Sch 1.

9 As to the Secretary of State see PARA 2.

10 Gambling Act 2005 s 197(3)(a). As to the meaning of 'licensee' see PARA 478 note 3.

A person making an application must give notice of the application to the person who holds the premises licence to which the application relates, and to each of the authorities which in accordance with the Gambling Act 2005 s 157 (see PARA 472 note 5) of the Act are the responsible authorities in relation to the premises to which the application relates: Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 4(1). Where the application is made by a responsible authority, the reference in reg 4(1)(b) to each of the responsible authorities in relation to the premises does not include a reference to the authority making the application: reg 4(2). Subject to reg 14 (matters not required to be included), a notice under reg 4(1) must be in the form specified in Sch 2, and must in particular specify the period of 28 days starting on the relevant date as the period during which representations about the application may be made to the licensing authority by (1) the person who holds the premises licence to which the application relates; (2) a responsible authority in relation to the premises; or (3) a person who is an interested party in relation to the premises: reg 4(3). A notice under reg 4(1) must be given within the period of seven days starting on the date on which the application is made: reg 4(4). For these purposes and the purposes of reg 5 (see note 12), 'the relevant date' in relation to an application means the day immediately following the last day of the period referred to in reg 4(4): reg 4(5). As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

11 Gambling Act 2005 s 197(3)(b); and see note 10.

12 Gambling Act 2005 s 197(4). Where an application is made to a licensing authority, that authority must publish notice of the application: (1) either (a) in a local newspaper or, if there is none, a local newsletter, circular or similar document, circulating within the licensing authority's area; or (b) on the licensing authority's internet website; and (2) by displaying the notice at a place (a) which is as near as reasonably practicable to the premises to which the application relates; and (b) where it can conveniently be read by members of the public: Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 5(1). Where a licensing authority has more than one website, reg 5(1)(a)(ii) (see head (1)(b) above) requires the licensing authority to publish notice of the application on the website which is wholly or mainly used by the authority to publicise matters relating to the licensing of gambling: reg 5(2). The notice referred to in reg 5(1)(a)(i) (see head (1)(a) above) must be published on at least one occasion during the period of ten working days starting on

the first working day after the day on which the application is made to the authority (reg 5(3)); and the notice referred to in reg 5(1)(a)(ii) or (b) (see heads (1)(b), (2) above) must be displayed or, as the case may be, published for a period of no less than 28 consecutive days starting on a date which is no later than the relevant date (reg 5(4)). Subject to reg 14 (matters not required to be included), any notice under reg 5(1) must be in the form specified in Sch 3, and must in particular specify the period of 28 days starting on the relevant date as the period during which representations about the application may be made to the licensing authority by (i) the person who holds the premises licence to which the application relates; (ii) a responsible authority in relation to the premises; or (iii) a person who is an interested party in relation to the premises: reg 5(5). As to the meaning of 'the relevant date' see note 10. 'Working day' means a day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971: Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 2.

13 Ie regulations under the Gambling Act 2005 s 197(2), (3) or (4): see the text and notes 5-12.

14 Gambling Act 2005 s 197(5)(a); and see notes 6, 12. Regulations by virtue of s 197(5)(a) must, in particular, require a notice to specify a period of time during which representations about the application may be made to the licensing authority by the licensee, by a responsible authority, or by an interested party: s 197(6).

15 Gambling Act 2005 s 197(5)(b); and see note 12.

16 Gambling Act 2005 s 197(5)(c).

17 For these purposes, a person fails to give proper notice of an application if, in the case of any one or more of the notices which that person is required to give under the Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 4 (see note 10), the person fails to give a notice which complies with the requirements of those 2007 Regulations as to the form and manner in which it is to be given: reg 6(2).

18 Ie the period provided for under the Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 4(4): see note 10.

19 Ie the requirements of the Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258.

20 Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 6(1), (3).

21 Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 6(4). Regulation 4(3) (see note 10) is to have effect in relation to the notice to be given under reg 6(3) as if it required the notice to specify the period referred to in reg 6(4) as the period during which representations about the application may be made by the person to whom the notice is given: reg 6(5).

22 Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 6(6).

23 Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 6(7).

24 For these purposes, a licensing authority fails to publish a proper notice of an application if (1) it fails to publish a notice which it is required to publish under the Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 5(1)(a) or (b) (see note 12); or (2) the published notice does not comply with the requirements of those 2007 Regulations as to the form and manner in which it is to be published: reg 7(2).

25 Ie under (as the case may be) the Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 5(3) or (4): see note 12.

26 See note 19.

27 Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 7(1), (3). Regulation 5(5) (see note 12) is to have effect in relation to the notice referred to in reg 7(3) as if it required the notice to specify the period referred to in that provision as the period during which representations about the application may be made by an interested party: reg 7(6).

28 Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 7(4). Where the notice is published in one of the ways referred to in reg 5(1)(a)(ii) or 5(1)(b) (see note 12), the period referred to in reg 7(4) is to start on the date on which the notice is first published: reg 7(5).

29 Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 7(7).

30 lie under the Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 5(1) (a) or (b): see note 12.

31 Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 7(8).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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528. Grant or rejection of application.

A licensing authority¹ may reject an application² for the review of a premises licence³ if the authority thinks that the grounds on which the review is sought:

- 1713 (1) do not raise an issue relevant to the principles to be applied⁴ in exercising the authority's functions⁵;
- 1714 (2) are frivolous⁶;
- 1715 (3) are vexatious⁷;
- 1716 (4) will certainly not cause the authority to wish to take action of a specified⁸ kind⁹;
- 1717 (5) are substantially the same as the grounds specified in an earlier application for a review¹⁰ in respect of the premises licence¹¹; or
- 1718 (6) are substantially the same as representations made¹² in relation to the application for the premises licence¹³.

If a licensing authority considers that heads (1) to (6) above apply to some but not all of the grounds on which a review is sought, the authority may reject the application in so far as it relies on grounds to which those heads apply¹⁴.

If, or in so far as, the licensing authority does not reject the application for a review¹⁵ under the above provisions¹⁶, it must grant the application¹⁷.

1 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

2 Ie an application under the Gambling Act 2005 s 197: see PARA 527.

3 As to the meaning of 'premises licence' see PARA 460 note 1.

4 Ie the principles to be applied accordance with the Gambling Act 2005 s 153: see PARA 464.

5 Gambling Act 2005 s 198(1)(a).

6 Gambling Act 2005 s 198(1)(b).

7 Gambling Act 2005 s 198(1)(c).

8 Ie action of a kind specified in the Gambling Act 2005 s 202(1): see PARA 531.

9 Gambling Act 2005 s 198(1)(d).

10 See note 2.

11 Gambling Act 2005 s 198(1)(e). In determining whether to exercise the power to reject an application under s 197 in accordance with s 198(1)(e), a licensing authority must consider the length of time that has elapsed since the making of the earlier application: s 198(2).

12 Ie under the Gambling Act 2005 s 161: see PARA 473. For these purposes, a reference to s 161 includes a reference to s 161 as applied by s 187(3) (see PARA 520): s 198(4).

13 Gambling Act 2005 s 198(1)(f). In determining whether to exercise the power to reject an application under s 197 in accordance with s 198(1)(f), a licensing authority must consider the length of time that has elapsed since the making of the representations under s 161: s 198(2); and see note 12.

14 Gambling Act 2005 s 198(3).

15 In an application made to the licensing authority under the Gambling Act 2005 s 197: see PARA 527.

16 In under the Gambling Act 2005 s 198: see the text and notes 1-14.

17 See the Gambling Act 2005 s 199(1), (2).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(5) PREMISES LICENCES/(ix) Review of Premises Licence/529. Initiation of a review by the licensing authority.

529. Initiation of a review by the licensing authority.

A licensing authority¹ may review in relation to premises licences² of a particular class the use made of premises³, and, in particular, arrangements made by licensees⁴ to ensure compliance with conditions attached by regulations made by the Secretary of State⁵, conditions attached by the licensing authority⁶ or conditions attached by a provision of Part 8⁷ of the Gambling Act 2005⁸.

A licensing authority may also review any matter connected with the use of premises in reliance on a premises licence if the authority:

- 1719 (1) has reason to suspect that the premises may have been used in purported reliance on a licence but not in accordance with a condition of the licence; or
- 1720 (2) thinks for any reason, which may relate to the receipt of a complaint about the use of the premises, that a review would be appropriate⁹.

Before reviewing a premises licence under heads (1) and (2) above the licensing authority must:

- 1721 (a) give notice¹⁰ of its intention to hold the review to the licensee¹¹; and
- 1722 (b) publish notice of its intention to hold the review¹².

The Secretary of State may make regulations about:

- 1723 (i) the manner and form in which such notice is to be given or published¹³; and
- 1724 (ii) the period of time within which notice is to be given or published¹⁴.

Where a licensing authority gives notice under head (a) above to the holder of the premises licence and the notice is not given in all respects in the prescribed form and manner¹⁵, the notice given by the licensing authority is of no effect and the licensing authority must give a further notice which complies with the prescribed requirements as to the form and manner in which such a notice is to be given¹⁶.

Where a licensing authority fails to publish a proper notice of its intention to hold a review¹⁷ during or for the period provided for¹⁸, the licensing authority must publish such notice in a form and manner which complies with the prescribed requirements¹⁹, other than as to the beginning of the period when publication is to be made, as soon as practicable after the end of the prescribed period²⁰. In such a case an interested party may make any representations within the period of 28 days starting on the day on which that notice is published²¹. The licensing authority may not hold the review until notice has been so published and that 28-day period has elapsed²². Subject to that, the licensing authority may disregard any irregularity in relation to the publication of a notice under head (b) above²³.

¹ As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

- 2 As to the meaning of 'premises licence' see PARA 460 note 1.
- 3 Gambling Act 2005 s 200(1)(a). As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.
- 4 As to the meaning of 'licensee' see PARA 478 note 3.
- 5 le conditions attached under the Gambling Act 2005 s 167 (mandatory conditions: see PARA 484) or under s 168 (default conditions: see PARA 485). As to the Secretary of State see PARA 2.
- 6 le conditions attached under the Gambling Act 2005 s 169: see PARA 486.
- 7 le a provision of the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9): see PARAS 460 et seq, 530 et seq.
- 8 Gambling Act 2005 s 200(1)(b).
- 9 Gambling Act 2005 s 200(2).
- 10 As to the method of giving notice see PARA 356 note 5.
- 11 Gambling Act 2005 s 200(3)(a). For the prescribed form of notice see the Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, regs 8(1), 14, Sch 4 (Sch 4 amended by SI 2007/3539). Such a notice must in particular specify the period of 28 days starting on the day on which the notice is given to the holder of the premises licence as the period during which representations about the application may be made to the licensing authority by (1) the person who holds the premises licence to which the review relates; (2) each of the authorities which in accordance with the Gambling Act 2005 s 157 (see PARA 472 note 5) are the responsible authorities in relation to the premises; or (3) a person who is an interested party in relation to the premises: Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 8(2). As to the meaning of 'interested party' see PARA 473 note 3.
- 12 Gambling Act 2005 s 200(3)(b). For the prescribed form of notice see the Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, regs 8(4), (5), 14, Sch 5. The notice must in particular specify the period of 28 days starting on the day on which the notice under the Gambling Act 2005 s 200(3)(a) (see note 11) is given to the holder of the premises licence as the period during which representations about the application may be made to the licensing authority by (1) the person who holds the premises licence to which the notice relates; (2) a responsible authority in relation to the premises; or (3) a person who is an interested party in relation to the premises: Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 8(6). The licensing authority must publish notice of its intention to hold a review: (a) either (i) in a local newspaper or, if there is none, a local newsletter, circular or similar document, circulating within the licensing authority's area; or (ii) on the licensing authority's internet website; and (b) by displaying the notice at a place which is as near as reasonably practicable to the premises to which the application relates, and where it can conveniently be read by members of the public: reg 8(7). Where a licensing authority has more than one website, reg 8(7)(a)(ii) (see head (a)(ii) above) requires the licensing authority to publish notice of its intention to hold a review on the website which is wholly or mainly used by the authority to publicise matters relating to the licensing of gambling: reg 8(8). The notice referred to in reg 8(7)(a)(i) (see head (a)(i) above) must be published on at least one occasion during the period of ten working days starting on the first working day after the day on which the licensing authority gives notice under the Gambling Act 2005 s 200(3)(a) to the holder of the premises licence of its intention to hold a review: Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 8(9). The notice referred to in reg (7)(a)(ii) or (7)(b) (see heads (a)(ii), (b) above) must be displayed or, as the case may be, published for a period of no less than 28 consecutive days starting on the day on which the licensing authority gives notice under the Gambling Act 2005 s 200(3)(a) to the holder of the premises licence of its intention to hold a review: Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 8(10). As to the meaning of 'working day' see PARA 527 note 12.
- 13 Gambling Act 2005 s 200(4)(a); and see notes 11-12. Regulations by virtue of s 200(4)(a) (see head (i) in the text) must, in particular, require a notice to specify a period of time during which representations about the review may be made to the licensing authority by the licensee, by a responsible authority, or by an interested party: s 200(5).
- 14 Gambling Act 2005 s 200(4)(b); and see notes 11-12.
- 15 le the form and manner required by the Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258: see notes 11-12.
- 16 Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 9(1), (2).
- 17 For these purposes, a licensing authority fails to publish a proper notice of its intention to hold a review if (1) it fails to publish a notice under the Gambling Act 2005 s 200(3)(b) (see head (b) in the text) in the manner in which it is required to publish the notice under the Gambling Act 2005 (Premises Licences) (Review)

Regulations 2007, SI 2007/2258, reg 8(7)(a) or (b) (see note 12); or (2) the published notice does not comply with the requirements of those 2007 Regulations as to the form and manner in which it is to be published: reg 11(2).

18 le the period referred to in (as the case may be) the Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 8(9) or (10): see note 12.

19 le the requirements of the Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258: see notes 11-12.

20 Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 11(1), (3). Regulation 8(6) (see note 12) is to have effect in relation to the notice referred to in reg 11(3) as if it required the notice to specify the period referred to in that provision as the period during which representations may be made by an interested party: reg 11(6).

21 Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 11(4). Where the notice is published in one of the ways referred to in reg 8(7)(a)(ii) or 8(7)(b) (see note 12), the period referred to in reg 11(4) is to start on the date on which the notice is first published: reg 11(5).

22 Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 11(7).

23 Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, reg 11(8).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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530. Procedure on a review.

Where a licensing authority¹ has granted² an application for a review of a premises licence³, or has given notice⁴ of its intention to hold a review of a premises licence, the following provisions apply⁵.

As soon as is reasonably practicable after the expiry of any prescribed period for representations⁶, the licensing authority must review the premises licence⁷. The purpose of the review must be to consider whether to take action of a specified kind⁸ in relation to the licence⁹.

In conducting a review of a premises licence a licensing authority must hold a hearing¹⁰ unless:

- 1725 (1) the applicant for the review, if there is one, and each person who has made representations about the review¹¹, has consented to the conduct of the review without a hearing¹²; or
- 1726 (2) the licensing authority thinks that each representation made about the review¹³ is frivolous, is vexatious, or will certainly not influence the review¹⁴.

In considering whether to take action of a specified kind¹⁵ the licensing authority must have regard¹⁶ to:

- 1727 (a) any representations made in accordance with the relevant statutory provisions¹⁷;
- 1728 (b) any representations made at the hearing of the review, if there is one; and
- 1729 (c) in the case of a review held in response to an application¹⁸, the grounds specified in the application for the review, apart from any in relation to which the application was rejected¹⁹ by the licensing authority²⁰.

1 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

2 Ie under the Gambling Act 2005 s 199: see PARA 528.

3 As to the meaning of 'premises licence' see PARA 460 note 1.

4 Ie under the Gambling Act 2005 s 200: see PARA 529.

5 Gambling Act 2005 s 201(1).

6 Ie any period prescribed under the Gambling Act 2005 s 197(6) (see PARA 527) or s 200(5) (see PARA 529).

7 Gambling Act 2005 s 201(2).

8 Ie action of a kind specified in the Gambling Act 2005 s 202(1): see PARA 531.

9 Gambling Act 2005 s 201(3).

10 The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, apply to the proceedings of a relevant committee in relation to the exercise of its functions under the Gambling Act 2005 s 201(4): see the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, SI 2007/173, reg 3(1). As to the meaning of 'relevant committee' see PARA 477 note 8. Notice of the hearing must be given to (1) the applicant (if any); (2)

any person who has made (and not withdrawn) representations about the review; and (3) the licensee: reg 5(1), Schedule, Table cols 1, 2. The notice must be accompanied by copies of the representations made in relation to the review (unless the relevant committee considers that the representations are vexatious, frivolous or will certainly not influence the determination of the review): Schedule, Table col 3. The procedure for the hearing has already been discussed in relation to the hearing of an application under s 162(1), (2) (see PARA 476): see PARA 477 et seq.

11 Ie under the Gambling Act 2005 s 197(6) (see PARA 527) or s 200(5) (see PARA 529).

12 Gambling Act 2005 s 201(4)(a).

13 Ie in accordance with the Gambling Act 2005 s 197(6) (see PARA 527) or s 200(5) (see PARA 529).

14 Gambling Act 2005 s 201(4)(b).

15 See note 8.

16 Ie in addition to the matters specified in the Gambling Act 2005 s 153 (principles to be applied in the exercise of a licensing authority's functions under the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9)): see PARA 464.

17 See note 13.

18 Ie an application under the Gambling Act 2005 s 197: see PARA 527.

19 Ie under the Gambling Act 2005 s 198(3): see PARA 528.

20 See the Gambling Act 2005 s 201(5).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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531. Action following a review.

As a result of a review¹ of a premises licence² a licensing authority³ may:

- 1730 (1) revoke the licence;
- 1731 (2) suspend the licence for a specified period not exceeding three months;
- 1732 (3) exclude a default condition attached to the licence⁴ or remove or amend an exclusion;
- 1733 (4) add, remove or amend⁵ a condition⁶;

and may, in particular, take such action on the grounds that the licensee⁷ has not used the licence⁸.

If the licensing authority decides to take action of a kind specified in heads (1) to (4) above, it must specify the time at which the action is to take effect⁹.

As soon as possible after completion of a review of a premises licence¹⁰ a licensing authority must give notice¹¹ of its decision on the review to:

- 1734 (a) the licensee;
- 1735 (b) the applicant for the review, if any;
- 1736 (c) the Gambling Commission¹²;
- 1737 (d) any person who made representations¹³;
- 1738 (e) in England and Wales, the chief officer of police for any area¹⁴ in which the premises¹⁵ are wholly or partly situated; and
- 1739 (f) the Commissioners for Revenue and Customs¹⁶.

Such a notice must be in the prescribed form¹⁷ and must give the authority's reasons for its decision¹⁸.

1 Ie a review under the Gambling Act 2005 s 201: see PARA 530.

2 As to the meaning of 'premises licence' see PARA 460 note 1.

3 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

4 Ie a condition attached to the licence under the Gambling Act 2005 s 168: see PARA 485.

5 Ie under the Gambling Act 2005 s 169: see PARA 486.

6 Gambling Act 2005 s 202(1).

7 As to the meaning of 'licensee' see PARA 478 note 3.

8 Gambling Act 2005 s 202(3).

9 Gambling Act 2005 s 202(2).

10 See note 1.

11 As to the method of giving notice see PARA 356 note 5.

- 12 As to the Gambling Commission see PARA 4.
- 13 le in accordance with the Gambling Act 2005 s 197 (see PARA 527) or s 200 (see PARA 529).
- 14 As to the meaning of references to the chief officer of police and his area see PARA 483 note 6; and as to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.
- 15 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.
- 16 Gambling Act 2005 s 203(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).
- 17 Gambling Act 2005 s 203(2)(a). For the prescribed form of notice see the Gambling Act 2005 (Premises Licences) (Review) Regulations 2007, SI 2007/2258, regs 13, 14, Sch 6.
- 18 Gambling Act 2005 s 203(2)(b).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(x) Appeals

532. Rights of appeal; stay pending appeal.

Where a licensing authority¹:

- 1740 (1) rejects an application under Part 8 of the Gambling Act 2005², the applicant may appeal³;
- 1741 (2) grants an application under that Part, either of the following may appeal, namely a person who made representations in relation to the application and the applicant⁴;
- 1742 (3) takes action⁵ as a result of a review of a premises licence⁶, or determines to take no action as a result of a review, any of the following may appeal:
 - 109 168. (a) the licensee⁷;
 - 169. (b) a person who made representations in relation to the review;
 - 170. (c) the person, if any, who applied for the review; and
 - 171. (d) the Gambling Commission⁸;
- 110 1743 (4) takes action or makes a determination on the transfer of a premises licence⁹, either of the following may appeal, namely the licensee and the applicant for transfer¹⁰.

A determination or other action under Part 8 of the Gambling Act 2005 has no effect while an appeal under heads (1) to (4) above could be brought, or has been brought and has not yet been either finally determined or abandoned¹¹; but a licensing authority making a determination or taking other action under that Part may direct that that is not to apply, in which case the magistrates' court determining an appeal may make any order that it thinks appropriate¹².

1 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

2 Ie under the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9): see PARA 460 et seq.

3 Gambling Act 2005 s 206(1). As to the appeal process see PARA 533.

4 Gambling Act 2005 s 206(2).

5 Ie under the Gambling Act 2005 s 202: see PARA 531.

6 As to the meaning of 'premises licence' see PARA 460 note 1.

7 As to the meaning of 'licensee' see PARA 478 note 3.

8 Gambling Act 2005 s 206(3). As to the Gambling Commission see PARA 4.

9 Ie under the Gambling Act 2005 s 188(4) or (5): see PARA 521.

10 Gambling Act 2005 s 206(4).

11 Gambling Act 2005 s 208(1).

12 Gambling Act 2005 s 208(2).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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533. Appeal process.

An appeal¹ in relation to premises² must be instituted:

- 1744 (1) in the magistrates' court for a local justice area in which the premises are wholly or partly situated;
- 1745 (2) by notice of appeal given to the designated officer; and
- 1746 (3) within the period of 21 days beginning with the day on which the appellant receives notice of the decision against which the appeal is brought³.

Where an appeal is brought⁴ the licence holder⁵, or the applicant in the case of an appeal against the grant of an application for a premises licence, must be a respondent in addition to the licensing authority⁶, unless he is the appellant⁷.

On an appeal⁸ the magistrates' court may:

- 1747 (a) dismiss the appeal;
- 1748 (b) substitute for the decision appealed against any decision that the licensing authority could have made;
- 1749 (c) remit the case to the licensing authority to decide in accordance with a direction of the court;
- 1750 (d) make an order about costs⁹;

and there is a right of appeal against a decision of a licensing authority¹⁰ following remittal under head (c) above¹¹.

A party to an appeal¹² may appeal on a point of law to the High Court, in relation to premises in England and Wales¹³.

1 le under the Gambling Act 2005 s 206: see PARA 532.

2 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.

3 Gambling Act 2005 s 207(1).

4 See note 1.

5 As to the meaning of 'holder' see PARA 486 note 10.

6 As to the meaning of 'the licensing authority' for these purposes see PARA 516 note 4; as to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 466-468.

7 Gambling Act 2005 s 207(2).

8 See note 1.

9 Gambling Act 2005 s 207(3).

10 le the Gambling Act 2005 s 206 (see PARA 532) applies to such a decision.

11 See the Gambling Act 2005 s 207(4).

12 See note 1.

13 Gambling Act 2005 s 209.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(6) TEMPORARY USE OF PREMISES

(i) Temporary Use Notices

534. Exception to offence of using premises for gambling.

A person who uses premises¹ to carry on an activity specified in heads (1) to (5) below², or who causes or permits premises to be used to carry on such an activity, does not commit an offence³ if a temporary use notice⁴ under Part 9 of the Gambling Act 2005⁵ has effect in respect of the premises, and the activity is carried on in accordance with the terms of the notice⁶. The specified activities are:

- 1751 (1) operating a casino⁷;
- 1752 (2) providing facilities⁸ for the playing of bingo⁹;
- 1753 (3) making a gaming machine¹⁰ available for use¹¹;
- 1754 (4) providing other facilities for gaming¹²; and
- 1755 (5) providing facilities for betting¹³, whether by making or accepting bets¹⁴, by acting as a betting intermediary¹⁵ or by providing other facilities for the making or accepting of bets¹⁶.

1 As to the meaning of 'premises' see PARA 311 note 5.

2 I.e. an activity listed in the Gambling Act 2005 s 37(1); see heads (1)-(5) in the text; and PARA 616.

3 I.e. an offence under the Gambling Act 2005 s 37; see PARA 616.

4 As to the meaning of 'temporary use notice' see PARA 535.

5 I.e. under the Gambling Act 2005 Pt 9 (ss 214-234); see PARA 535 et seq.

6 Gambling Act 2005 s 214.

7 See the Gambling Act 2005 s 37(1)(a). As to the meaning of 'casino' see PARA 311.

8 As to the meaning of 'providing facilities' for gambling see PARA 309.

9 See the Gambling Act 2005 s 37(1)(b). As to the meaning of 'bingo' see PARA 349 note 8.

10 As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547.

11 See the Gambling Act 2005 s 37(1)(c).

12 See the Gambling Act 2005 s 37(1)(d). As to the meaning of 'gaming' see PARA 310.

13 As to the meaning of 'betting' see PARA 312.

14 As to the meaning of 'accepting a bet' see PARA 312 note 2.

15 As to the meaning of 'betting intermediary', and as to when a person acts as a betting intermediary, see PARA 315.

16 See the Gambling Act 2005 s 37(1)(e).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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535. Nature, form and effect of temporary use notice.

A temporary use notice is a notice given in accordance with the provisions of Part 9 of the Gambling Act 2005¹ by the holder² of an operating licence³ and stating his intention to carry on one or more specified prescribed⁴ activities⁵. The Secretary of State⁶ may by regulations:

- 1756 (1) prescribe activities which may be specified in such a notice⁷;
- 1757 (2) prescribe combinations of activity that may not be specified in such a notice⁸;
- 1758 (3) prescribe activities which may be specified under such a notice only if no other prescribed activity is specified in the notice⁹;

and a temporary use notice given by a person may specify an activity only if the person's operating licence authorises¹⁰ him to carry on the activity¹¹.

For the purposes of head (1) above, the activities which may be specified in a temporary use notice are providing facilities¹² for any form of equal chance gaming¹³ where those participating in the gaming are taking part in a competition which is intended to produce a single, overall winner¹⁴; but this does not include providing such facilities in circumstances where any person participating in the gaming does so by means of a gaming machine¹⁵.

A temporary use notice may not be given in respect of a vehicle or part of a vehicle¹⁶. Such a notice may be given:

- 1759 (a) in respect of all or part of a passenger vessel¹⁷;
- 1760 (b) in respect of all or part of a vessel¹⁸ situated at a fixed place in or on water¹⁹;

and may not be given in respect of all or part of a vessel to which neither of heads (a) and (b) above applies²⁰.

A temporary use notice must:

- 1761 (i) be in the prescribed form²¹;
- 1762 (ii) specify the activity to be carried on in reliance on the notice²²;
- 1763 (iii) specify the premises²³ on which the activity is to be carried on²⁴;
- 1764 (iv) specify the period of time during which the notice is to have effect²⁵;
- 1765 (v) specify the times of day during that period at which the activity is to be carried on²⁶;
- 1766 (vi) specify any periods during the previous 12 months²⁷ during which a temporary use notice has had effect in respect of the premises or any part of the premises²⁸;
- 1767 (vii) specify the date on which the notice is given²⁹; and
- 1768 (viii) contain any other prescribed information³⁰.

A set of premises may not be the subject of temporary use notification³¹ for more than 21 days in a period of 12 months³². A set of premises may, however, be the subject of more than one

temporary use notice in a period of 12 months, provided that the aggregate of the periods for which the notices have effect does not exceed 21 days³³.

- 1 le in accordance with the Gambling Act 2005 Pt 9 (ss 214-234): see PARA 536 et seq. As to the procedure for giving such a notice see s 219; and PARA 540.
- 2 As to the meaning of 'holder' in relation to an operating licence see PARA 350 note 5.
- 3 As to the meaning of 'operating licence' see PARA 349 note 2.
- 4 As to the prescribed activities see the text and notes 12-15.
- 5 Gambling Act 2005 ss 215(1), 353(1).
- 6 As to the Secretary of State see PARA 2.
- 7 Gambling Act 2005 s 215(2)(a); and see the text and notes 12-15. As to the meaning of 'passenger vessel' see PARA 461 note 4.
- 8 Gambling Act 2005 s 215(2)(b).
- 9 Gambling Act 2005 s 215(2)(c).
- 10 As to the meaning of 'authorise' see PARA 349 note 5.
- 11 Gambling Act 2005 s 215(3).
- 12 As to the meaning of 'providing facilities' for gambling see PARA 309.
- 13 As to the meaning of 'equal chance gaming' see PARA 311 note 4.
- 14 Gambling Act 2005 (Temporary Use Notices) Regulations 2007, SI 2007/3157, reg 2(1), (2).
- 15 Gambling Act 2005 (Temporary Use Notices) Regulations 2007, SI 2007/3157, reg 2(3). As to the meaning of 'gaming machine' see the Gambling Act 2005 ss 235, 353(1); and PARA 547.
- 16 Gambling Act 2005 s 231(1)(a). As to the meaning of 'vehicle' see PARA 311 note 5.
- 17 Gambling Act 2005 s 231(1)(b). As to the meaning of 'vessel' see PARA 311 note 5.
- 18 le within the meaning of the Gambling Act 2005 s 353(1): see PARA 311 note 5.
- 19 Gambling Act 2005 s 231(c). In relation to a vessel, a reference in Pt 9 to a place in which premises are wholly or partly situated is to be construed (1) in the case of a vessel (within the meaning of s 353(1)) situated at a fixed place in or on water, as a reference to that place; (2) in the case of a vessel which is permanently moored at a place, as a reference to that place; (3) in the case of a vessel which is habitually moored at one place more frequently or for longer periods than at any other place, as a reference to that place; and (4) in any other case, as a reference to any place at which a vessel is moored or is likely to be moored, or to the place in the United Kingdom nearest to any place at which a vessel is or is likely to be, while activities are carried on in the vessel in reliance on a temporary use notice: s 231(2). As to the meaning of 'United Kingdom' see PARA 16 note 8.
- 20 Gambling Act 2005 s 231(1)(d).
- 21 Gambling Act 2005 s 216(1)(a). 'Prescribed' means prescribed by regulations made by the Secretary of State: s 216(2). For the prescribed form of notice see the Gambling Act 2005 (Temporary Use Notices) Regulations 2007, SI 2007/3157, regs 3, 5, Sch 1. Different forms are prescribed for notices applying to premises other than a vessel and for notices applying to a vessel: see Sch 1 Pts 1, 2.
- 22 Gambling Act 2005 s 216(1)(b).
- 23 As to the meaning of 'premises' see PARA 311 note 5.
- 24 Gambling Act 2005 s 216(1)(c).

25 Gambling Act 2005 s 216(1)(d). Subject to the provisions of Pt 9 and provided that the requirements of that Part are complied with, a temporary use notice has effect during the period specified in the notice in accordance with s 216(1)(d): s 217.

26 Gambling Act 2005 s 216(1)(e).

27 For these purposes, 'the previous 12 months' means the period of 12 months ending with the last day of the period specified under the Gambling Act 2005 s 216(1)(d) (see head (iv) in the text): s 216(3).

28 Gambling Act 2005 s 216(1)(f).

29 Gambling Act 2005 s 216(1)(g).

30 Gambling Act 2005 s 216(1)(h). As to the prescribed content of a temporary use notice see the Gambling Act 2005 (Temporary Use Notices) Regulations 2007, SI 2007/3157, regs 3, 5, Sch 1.

31 For these purposes, a set of premises is the subject of temporary use notification (or of a notice) if any part of the premises is the subject of temporary use notification (or of a notice): Gambling Act 2005 s 218(8).

32 Gambling Act 2005 s 218(1). If a temporary use notice is given to a licensing authority and s 218(1) would be contravened if the notice had effect for any part of the period specified in accordance with s 216(1)(d) (see head (iv) in the text), the licensing authority must give a counter-notice providing for the temporary use notice not to have effect: s 218(3). Section 218(5), (6) applies where a temporary use notice is given to a licensing authority and (1) s 218(1) would be contravened if the notice had effect for the whole of the period specified in accordance with s 216(1)(d) ('the specified period'); but (2) the notice could have effect for some part of the specified period without resulting in contravention of ss 218(1): s 218(4). The licensing authority must give a counter-notice providing that the temporary use notice (a) is not to have effect during such part of the specified period as the licensing authority may specify in the counter-notice ('the excluded period'); and (b) is to be treated for the purposes of Pt 9 as if it related only to the non-excluded period: s 218(5). Where there is a choice as to which part of the specified period to exclude under s 218(5), the licensing authority must consult the person who gave the temporary use notice before giving a counter-notice by virtue of s 218(5): s 218(6). A counter-notice under s 218 is to have effect; and s 224(4), (6) (see PARA 544) applies in relation to a counter-notice given under s 218 as it applies in relation to a counter-notice given under s 224: s 218(7).

As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 536-538.

33 Gambling Act 2005 s 218(2).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(ii) Functions of Licensing Authorities

536. Delegation of licensing authority functions.

The functions under Part 9 of the Gambling Act 2005¹ of a licensing authority in England and Wales² are delegated to the licensing committee³ of the authority⁴.

Where a licensing committee is unable to discharge any function delegated to it in accordance with the above provisions because of the number of its members who are unable to take part in the consideration or discussion of any matter or vote on any question with respect to it, the committee must refer the matter back to the licensing authority and the authority must discharge that function⁵.

1 Ie under the Gambling Act 2005 Pt 9 (ss 214-234): see PARAS 535, 537 et seq.

2 As to the licensing authorities see PARA 3.

3 Ie the licensing committee established under the Licensing Act 2003 s 6: see PARA 40.

4 Gambling Act 2005 s 232(1).

5 Licensing Act 2003 s 7(9) (applied for these purposes by the Gambling Act 2005 s 232(2)(a)).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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537. Proceedings of licensing committee.

A licensing committee¹ may establish one or more sub-committees consisting of three members of the committee². Subject to regulations³, each licensing committee may regulate its own procedure and that of its sub-committees⁴.

1 As to licensing committees see PARA 40; and as to the delegation of functions under the Gambling Act 2005 Pt 9 (ss 214-234) to such committees see PARA 536.

2 Licensing Act 2003 s 9(1) (s 9 applied for these purposes by the Gambling Act 2005 s 232(4)).

3 Regulations may make provision about: (1) the proceedings of licensing committees and their sub-committees (including provision about the validity of proceedings and the quorum for meetings); (2) public access to the meetings of those committees and sub-committees; (3) the publicity to be given to those meetings; (4) the agendas and records to be produced in respect of those meetings; and (5) public access to such agendas and records and other information about those meetings: Licensing Act 2003 s 9(2) (as applied: see note 2). For these purposes, regulations may, in particular, make provision which applies: (1) only to functions under the Licensing Act 2003 (see PARA 41 note 3); (2) only in relation to functions under the Gambling Act 2005 Pt 9; or (3) differently in relation to functions under the Licensing Act 2003 and functions under the Gambling Act 2005 Pt 9: s 232(4). At the date at which this volume states the law, no such regulations had been made with regard to functions under the Gambling Act 2005 Pt 9.

4 Licensing Act 2003 s 9(3) (as applied: see note 2).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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538. Sub-delegation of functions of licensing committee etc.

A licensing committee¹ may arrange for the discharge of any functions exercisable by it:

- 1769 (1) by a sub-committee established by the licensing committee; or
- 1770 (2) by an officer of the licensing authority²;

and such arrangements may provide for more than one sub-committee or officer to discharge the same function concurrently³. Where arrangements are made under head (1) above, then the sub-committee may⁴ in turn arrange for the discharge of the function concerned by an officer of the licensing authority⁵. The power so exercisable by a sub-committee established by a licensing committee is subject to any direction given by that committee to the sub-committee⁶.

Arrangements may not, however, be made under head (1) or head (2) above for the discharge by an officer of any of certain specified⁷ functions⁸.

¹ As to licensing committees see PARA 40; and as to the delegation to such committees of functions under the Gambling Act 2005 Pt 9 (ss 214-234) see PARA 536.

² Licensing Act 2003 s 10(1) (s 10 applied for these purposes by the Gambling Act 2005 s 232(2)(b)).

³ Licensing Act 2003 s 10(3) (as applied: see note 2).

⁴ ie subject to the Licensing Act 2003 s 10(4), (5): see the text and notes 6-8.

⁵ Licensing Act 2003 s 10(2) (as applied: see note 2).

⁶ Licensing Act 2003 s 10(5) (as applied: see note 2).

⁷ The specified functions are any function under the Gambling Act 2005 s 224 (see PARA 544): Licensing Act 2003 s 10(4) (substituted for these purposes by the Gambling Act 2005 s 232(3)).

⁸ See the Licensing Act 2003 s 10(4) (as applied (see note 2) and substituted for these purposes (see note 7)).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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539. Register of temporary use notices.

A licensing authority¹ must:

- 1771 (1) maintain a register of temporary use notices² given to the authority together with such other information as may be prescribed³;
- 1772 (2) make the register and information available for inspection by members of the public at all reasonable times⁴; and
- 1773 (3) make arrangements for the provision of a copy of an entry in the register, or of information, to a member of the public on request⁵.

A licensing authority may, however, refuse to provide a copy of an entry or of information unless the person seeking it pays a reasonable fee specified by the authority⁶.

The Secretary of State⁷ may make regulations about the form of the register and the manner in which it is maintained⁸. He may also make regulations:

- 1774 (a) requiring licensing authorities to give to the Gambling Commission⁹ specified information about temporary use notices given to them¹⁰;
- 1775 (b) requiring the Commission to maintain a register of the information provided to it under head (a) above¹¹;
- 1776 (c) requiring the Commission to grant access to the register to members of the public, without charge¹²;
- 1777 (d) requiring the Commission to make copies of entries available on request, and on payment of a reasonable fee, to members of the public¹³; and
- 1778 (e) excusing licensing authorities, wholly or partly, from compliance with heads (1) to (3) above¹⁴.

1 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 536-538.

2 As to the meaning of 'temporary use notice' see PARA 535.

3 Gambling Act 2005 s 234(1)(a).

4 Gambling Act 2005 s 234(1)(b).

5 Gambling Act 2005 s 234(1)(c).

6 Gambling Act 2005 s 234(2).

7 As to the Secretary of State see PARA 2.

8 Gambling Act 2005 s 234(3). At the date at which this volume states the law, no such regulations had been made.

9 As to the Gambling Commission see PARA 4.

10 Gambling Act 2005 s 234(4)(a); and see note 8.

11 Gambling Act 2005 s 234(4)(b); and see note 8.

12 Gambling Act 2005 s 234(4)(c); and see note 8.

13 Gambling Act 2005 s 234(4)(d); and see note 8.

14 Gambling Act 2005 s 234(4)(e); and see note 8.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(6) TEMPORARY USE OF PREMISES/(iii) Procedure for Temporary Use Notices/540. Giving, acknowledgment and display of notice; timing of consideration by the licensing authority.

(iii) Procedure for Temporary Use Notices

540. Giving, acknowledgment and display of notice; timing of consideration by the licensing authority.

A temporary use notice¹ must be given² to the licensing authority³ for the area in which the specified premises⁴ are situated⁵, before the period of three months ending with the day before the specified⁶ period⁷. A temporary use notice so given must be accompanied by a copy of the notice, and such fee as may be prescribed by regulations made, in relation to premises in England and Wales, by the Secretary of State⁸.

A person who gives a temporary use notice must give a copy of it to:

- 1779 (1) the Gambling Commission⁹;
- 1780 (2) in England and Wales, the chief officer of police for any area¹⁰ in which the premises specified in the notice are wholly or partly situated¹¹; and
- 1781 (3) the Commissioners for Revenue and Customs¹².

A person who gives a temporary use notice must ensure that it, and any copy so required to be given, are received within the period of seven days beginning with the specified¹³ date¹⁴.

Where a licensing authority receives a temporary use notice in accordance with the above provisions¹⁵, it must as soon as is reasonably practicable send a written acknowledgment of the notice to the person who gave it¹⁶. It must complete proceedings on the notice¹⁷ before the end of the period of six weeks beginning with the date on which it receives the notice¹⁸.

A person who gives a temporary use notice in respect of premises must arrange for a copy of the notice to be displayed prominently on the premises at any time when an activity is being carried out in reliance on the notice¹⁹. If he fails without reasonable excuse to comply with this requirement, he is guilty of an offence²⁰.

1 As to the meaning of 'temporary use notice' see PARA 535.

2 As to the method of giving notice see PARA 356 note 5.

3 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 536-538.

4 I.e. the premises specified under the Gambling Act 2005 s 216(1)(c): see PARA 535 at head (c). As to the meaning of 'premises' see PARA 311 note 5.

5 Gambling Act 2005 s 219(1). In the case of premises situated partly in the area of one licensing authority and partly in the area of another, the person giving the notice may give it to either authority, and must give a copy of the notice to the other authority: s 219(6). See also PARA 535 note 19.

6 I.e. the period specified under the Gambling Act 2005 s 216(1)(d): see PARA 535 at head (d).

7 Gambling Act 2005 s 219(2).

8 Gambling Act 2005 s 219(3). As to the Secretary of State see PARA 3. Section 212 (see PARA 470) has effect in relation to fees under s 219 as it has effect in relation to fees under Pt 8 (ss 150-213, Sch 9: see PARA 460 et

seq): s 219(8). The fee payable under s 219(3)(b) on giving a temporary use notice must be of such amount not exceeding £500 as may be determined by the licensing authority to which the notice is given: Gambling Act 2005 (Temporary Use Notices) Regulations 2007, SI 2007/3157, reg 7(1).

9 Gambling Act 2005 s 219(4)(a). As to the Gambling Commission see PARA 4.

10 For these purposes, 'chief officer of police' has the meaning given by the Police Act 1996 s 101(1); and a reference to a chief officer's area is a reference to the area in respect of which he has responsibility under that Act: Gambling Act 2005 s 219(7). As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

11 Gambling Act 2005 s 219(4)(b). See also PARA 535 note 19.

12 Gambling Act 2005 s 219(4)(c) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

13 Ie the period specified under the Gambling Act 2005 s 216(1)(g): see PARA 535 at head (g).

14 Gambling Act 2005 s 219(5).

15 Ie in accordance with the Gambling Act 2005 s 219(1): see the text and notes 1-5.

16 Gambling Act 2005 s 220.

17 The reference in the text to proceedings on a temporary use notice is a reference to (1) considering whether to give a notice of objection under the Gambling Act 2005 s 221 (see PARA 542); (2) holding a hearing in relation to any notice of objection given under s 221 (whether or not by the licensing authority) or agreeing to dispense with a hearing in accordance with s 222(3) (see PARA 542); and (3) giving a counter-notice under s 224 (see PARA 544) or a notice under s 225 (see PARA 544): s 228(2).

18 Gambling Act 2005 s 228(1).

19 Gambling Act 2005 s 229(1)(a).

20 Gambling Act 2005 s 229(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 229(3). As to the standard scale see PARA 17 note 21. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684. A licensing authority may institute criminal proceedings in respect of such an offence: see s 346(1)(d); and PARA 345.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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541. Indorsement of notice.

The following provisions apply where a temporary use notice¹ has been given² to a licensing authority³.

If no notice of objection is pending⁴ in relation to the temporary use notice when the specified 14-day period⁵ expires, the licensing authority must:

- 1782 (1) indorse the copy submitted to it⁶ in such manner as may be prescribed by the Secretary of State⁷ by regulations⁸; and
- 1783 (2) return the indorsed copy, as soon as is reasonably practicable, to the person giving the notice⁹.

If a notice of objection is pending in relation to a temporary use notice when that 14-day period expires, then as soon as is reasonably practicable after the completion of proceedings on the temporary use notice¹⁰ the licensing authority must, unless it gives a counter-notice¹¹:

- 1784 (a) indorse the copy submitted to it in such manner as may be prescribed by the Secretary of State by regulations¹²; and
- 1785 (b) return the indorsed copy, as soon as is reasonably practicable, to the person giving the temporary use notice¹³.

A licensing authority must make arrangements whereby if an indorsed copy of a temporary use notice is lost, stolen or damaged the person who gave the notice can obtain a new indorsed copy¹⁴. The arrangements may include the charging of such fee as the Secretary of State may prescribe by regulations¹⁵.

A person who gives a temporary use notice in respect of premises¹⁶ must arrange for the notice indorsed by the licensing authority in accordance with the above provisions to be produced on request to a constable¹⁷, to a Commissioner for Revenue and Customs, to an enforcement officer¹⁸ or to an authorised local authority officer¹⁹. If he fails without reasonable excuse to comply with this requirement, he is guilty of an offence²⁰.

1 As to the meaning of 'temporary use notice' see PARA 535.

2 Ie under the Gambling Act 2005 s 219: see PARA 540.

3 Gambling Act 2005 s 227(1). As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 536-538.

4 For these purposes, a notice of objection is pending if it has been given in accordance with the Gambling Act 2005 s 221 (see PARA 542) and it has not been withdrawn, and it is not treated as withdrawn in accordance with s 223(3)(b) (see PARA 543): s 227(4).

5 Ie the 14-day period specified in the Gambling Act 2005 s 221(4): see PARA 542.

6 Ie under the Gambling Act 2005 s 219(3)(a): see PARA 535.

7 As to the Secretary of State see PARA 3.

8 Gambling Act 2005 s 227(2)(a). The copy of the notice is indorsed by the licensing authority to which it is given completing the appropriate section of the notice: see the Gambling Act 2005 (Temporary Use Notices) Regulations 2007, SI 2007/3157, reg 6.

9 Gambling Act 2005 s 227(2)(b).

10 For these purposes, proceedings on a temporary use notice are completed (1) if any notice of objection given in relation to the temporary use notice has been withdrawn; or (2) if the licensing authority has given a counter-notice under s 224 (see PARA 544) or a notice under s 225 (see PARA 544): s 227(5).

11 Ie under the Gambling Act 2005 s 224(3)(a): see PARA 544.

12 Gambling Act 2005 s 227(3)(a); and see note 8.

13 Gambling Act 2005 s 227(3)(b).

14 Gambling Act 2005 s 227(6).

15 Gambling Act 2005 s 227(6)(a). Section 212 (see PARA 470) has effect in relation to fees under s 227(6)(a) as it has effect in relation to fees under Pt 8 (ss 150-213, Sch 8: see PARA 460 et seq): s 227(6)(b).

The fee payable for the replacement of an indorsed copy of a temporary use notice is to be of such amount not exceeding £25 as the licensing authority may determine, where the licensing authority responsible for issuing the copy of the notice is in England or Wales: Gambling Act 2005 (Temporary Use Notices) Regulations 2007, SI 2007/3157, reg 7(2).

16 As to the meaning of 'premises' see PARA 311 note 5. See also s 231(1), (2), cited in PARA 535.

17 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

18 As to the meaning of 'enforcement officer' see PARA 342 note 7.

19 Gambling Act 2005 s 229(1)(b) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the meaning of 'authorised local authority officer' see PARA 517 note 6.

20 Gambling Act 2005 s 229(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 229(3). As to the standard scale see PARA 17 note 21.

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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542. Objections.

Where a person¹ receives² a temporary use notice³, or a copy of a temporary use notice, if the person thinks that having regard to the licensing objectives⁴ the temporary use notice should not have effect, or should have effect only with modification, he may give a notice⁵ of objection to the person who gave the temporary use notice⁶. A person who gives such a notice of objection must give a copy of the notice to the licensing authority to which the temporary use notice was given, unless it is that licensing authority which gives the notice of objection⁷. A notice of objection and any copy so required must be given within the period of 14 days beginning with the date⁸ on which the temporary use notice is given⁹. A notice of objection must state:

- 1786 (1) that the person giving the notice objects to the temporary use notice; and
- 1787 (2) the person's reasons¹⁰.

If the person who gives a notice of objection later withdraws it by notice in writing to the persons mentioned above, the notice of objection must be disregarded¹¹.

Where a temporary use notice is given to a licensing authority¹² and a notice of objection is given¹³, the licensing authority must hold a hearing¹⁴ at which any of the following may make representations about the notice of objection:

- 1788 (a) the person who gave the temporary use notice;
- 1789 (b) the person who gave the notice of objection; and
- 1790 (c) any other person who was entitled¹⁵ to receive a copy of the temporary use¹⁶.

The licensing authority need not, however, arrange a hearing if the authority and each person who would be entitled to make representations agree in writing that a hearing is unnecessary¹⁷.

1 'Person' here includes a licensing authority. As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 536-538.

2 Ie in accordance with the Gambling Act 2005 s 219: see PARA 540.

3 As to the meaning of 'temporary use notice' see PARA 535.

4 As to the licensing objectives see PARA 331.

5 As to the method of giving notice see PARA 356 note 5.

6 Gambling Act 2005 s 221(1), (2).

7 Gambling Act 2005 s 221(3).

8 Ie the date as specified under the Gambling Act 2005 s 216(1)(g): see PARA 535 at head (g).

9 Gambling Act 2005 s 221(4).

10 Gambling Act 2005 s 221(5).

- 11 Gambling Act 2005 s 221(6).
- 12 See note 2.
- 13 ie in accordance with the Gambling Act 2005 s 221: see the text and notes 1-11.
- 14 At the date at which this volume states the law, there was no prescribed procedure for such hearings.
- 15 See note 2.
- 16 Gambling Act 2005 s 222(1), (2).
- 17 Gambling Act 2005 s 222(3).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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543. Modification by agreement.

Where:

- 1791 (1) a person has given¹ a temporary use notice² to a licensing authority³;
- 1792 (2) a notice of objection has been given by a person ('the objector')⁴; and
- 1793 (3) a hearing⁵ has neither taken place, nor been dispensed with⁶,

the objector may by notice in writing⁷ to the person who gave the temporary use notice propose a modification of that notice⁸.

If the person who gave the temporary use notice accepts the modification, he must give a new notice⁹, incorporating the modification¹⁰, and the objection is to be treated as withdrawn; but this is without prejudice to the right of any person other than the objector to give a notice of objection in relation to the new notice¹¹.

1 le in accordance with the Gambling Act 2005 s 219: see PARA 540.

2 As to the meaning of 'temporary use notice' see PARA 535.

3 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 536-538.

4 le in accordance with the Gambling Act 2005 s 221: see PARA 542.

5 le a hearing in accordance with the Gambling Act 2005 s 222(2): see PARA 542.

6 le dispensed with in accordance with the Gambling Act 2005 s 222(3): see PARA 542.

7 As to the method of giving notice see PARA 356 note 5.

8 Gambling Act 2005 s 223(1), (2).

9 See note 1.

10 Gambling Act 2005 s 223(3)(a). Section 219(2), (3)(b) (see PARA 540) does not apply to a temporary use notice given under s 223(3)(a): s 223(4).

11 Gambling Act 2005 s 223(3)(b).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(6) TEMPORARY USE OF PREMISES/(iii) Procedure for Temporary Use Notices/544. Counter-notice by the licensing authority or dismissal of objection.

544. Counter-notice by the licensing authority or dismissal of objection.

Where a person has given¹ a temporary use notice² to a licensing authority³, a notice of objection has been given⁴ and a hearing has either taken place⁵ or has been dispensed with⁶, then if the licensing authority thinks that the temporary use notice should not have effect or should have effect only with modification, the authority may give a counter-notice under these provisions to the person who gave the temporary use notice⁷. A counter-notice may provide for the temporary use notice:

- 1794 (1) not to have effect;
- 1795 (2) to have effect only in respect of a specified activity;
- 1796 (3) to have effect only in respect of activity carried on during a specified period of time or at specified times of day;
- 1797 (4) to have effect subject to compliance with a specified condition;

and provision so made is to have effect⁸. Such a notice must:

- 1798 (a) be in the prescribed form⁹;
- 1799 (b) contain the prescribed information¹⁰; and
- 1800 (c) be given as soon as is reasonably practicable¹¹;

and must state the licensing authority's reasons for giving it¹². Where a licensing authority gives a counter-notice it must as soon as is reasonably practicable give a copy to any person who was entitled to receive a copy of the temporary use notice¹³.

In exercising its functions under the above provisions, a licensing authority must aim to permit the use of premises¹⁴ for gambling¹⁵ in so far as the authority thinks it:

- 1801 (i) is in accordance with any relevant code of practice¹⁶;
- 1802 (ii) is in accordance with any relevant guidance issued¹⁷ by the Gambling Commission¹⁸;
- 1803 (iii) subject to heads (i) and (ii) above, is reasonably consistent with the licensing objectives¹⁹; and
- 1804 (iv) subject to heads (i) to (iii) above, is in accordance with the three-year statement of licensing policy published²⁰ by the authority²¹.

Where:

- 1805 (A) a person has given a temporary use notice to a licensing authority²²;
- 1806 (B) a notice of objection has been given²³; and
- 1807 (C) the licensing authority has determined not to give a counter-notice,

the licensing authority must as soon as is reasonably practicable give notice of its determination to the person who gave the temporary use notice, and to each person who received²⁴ a copy of the temporary use notice²⁵.

- 1 le in accordance with the Gambling Act 2005 s 219: see PARA 540.
- 2 As to the meaning of 'temporary use notice' see PARA 535.
- 3 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 536-538.
- 4 le in accordance with the Gambling Act 2005 s 221: see PARA 542.
- 5 le in accordance with the Gambling Act 2005 s 222(2): see PARA 542.
- 6 le in accordance with the Gambling Act 2005 s 222(3): see PARA 542.
- 7 Gambling Act 2005 s 224(1), (2).
- 8 Gambling Act 2005 s 224(3).
- 9 Gambling Act 2005 s 224(4)(a). For these purposes, 'prescribed' means prescribed by regulations made by the Secretary of State: s 224(8). For the prescribed form of counter-notice see the Gambling Act 2005 (Temporary Use Notices) Regulations 2007, SI 2007/3157, regs 4, 5, Sch 2.
- 10 Gambling Act 2005 s 224(4)(b). For the prescribed content of a counter-notice see the Gambling Act 2005 (Temporary Use Notices) Regulations 2007, SI 2007/3157, regs 4, 5, Sch 2.
- 11 Gambling Act 2005 s 224(4)(c).
- 12 Gambling Act 2005 s 224(5).
- 13 Gambling Act 2005 s 224(6).
- 14 As to the meaning of 'premises' see PARA 311 note 5; see also PARA 461.
- 15 As to the meaning of 'gambling' see PARA 308.
- 16 le any relevant code of practice under the Gambling Act 2005 s 24: see PARA 337.
- 17 le issued under the Gambling Act 2005 s 25: see PARA 338.
- 18 As to the Gambling Commission see PARA 4.
- 19 As to the licensing objectives see PARA 331.
- 20 le under the Gambling Act 2005 s 349: see PARA 344.
- 21 See the Gambling Act 2005 s 153(1), applied for these purposes by s 224(7).
- 22 See note 1.
- 23 See note 4.
- 24 See note 1.
- 25 Gambling Act 2005 s 225(1), (2).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

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545. Appeals.

Where a licensing authority¹ gives a counter-notice², or gives a notice dismissing an objection³, any of the following may appeal, namely:

- 1808 (1) the person who gave the temporary use notice⁴; and
- 1809 (2) a person who was entitled⁵ to receive a copy of the temporary use notice⁶.

Such an appeal must be instituted:

- 1810 (a) in the magistrates' court for a local justice area in which the premises⁷ to which the temporary use notice relates are wholly or partly situated⁸;
- 1811 (b) by notice of appeal given to the designated officer; and
- 1812 (c) within the period of 14 days beginning with the day on which the appellant receives notice of the action against which the appeal is brought⁹.

A person who was entitled to receive a copy of the temporary use notice¹⁰ must determine whether to appeal, and institute any appeal, as soon as is reasonably practicable¹¹; and where an appeal is brought against the giving of a notice dismissing an objection¹² the person who gave the temporary use notice must be a respondent in addition to the licensing authority¹³.

On such an appeal the magistrates' court may:

- 1813 (i) dismiss the appeal;
- 1814 (ii) direct the licensing authority to take action of a specified kind;
- 1815 (iii) remit the case to the licensing authority to decide in accordance with a direction of the court¹⁴;
- 1816 (iv) make an order about costs¹⁵.

A party to such an appeal may bring a further appeal to the High Court on a point of law¹⁶.

1 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 536-538.

2 Ie under the Gambling Act 2005 s 224: see PARA 544.

3 Ie under the Gambling Act 2005 s 225: see PARA 544.

4 As to the meaning of 'temporary use notice' see PARA 535.

5 Ie in accordance with the Gambling Act 2005 s 219: see PARA 540.

6 Gambling Act 2005 s 226(1), (2).

7 As to the meaning of 'premises' see PARA 311 note 5. See also s 231(1), cited in PARA 535.

8 See PARA 535 note 19.

9 Gambling Act 2005 s 226(3).

- 6 See note 5.
- 11 Gambling Act 2005 s 226(4).
- 12 See note 3.
- 13 Gambling Act 2005 s 226(5).
- 14 The Gambling Act 2005 s 226(2) (see heads (1)-(2) in the text) applies to a decision of a licensing authority following remittal under s 226(6)(c) (see head (c) in the text): s 226(7).
- 15 Gambling Act 2005 s 226(6).
- 16 Gambling Act 2005 s 226(8).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(iv) Withdrawal of Notice

546. Withdrawal of temporary use notice.

If a person who gives¹ a temporary use notice² to a licensing authority³ notifies⁴ the licensing authority that the notice is withdrawn, the notice has no effect or, if it has started to have effect, it ceases to have effect⁵. No further proceedings are to take place in respect of the notice, except in respect of a matter arising during or in relation to a time at which the notice had effect⁶.

1 In accordance with the Gambling Act 2005 s 219: see PARA 540.

2 As to the meaning of 'temporary use notice' see PARA 535.

3 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARAS 536-538.

4 As to the method of notification see PARA 356 note 5.

5 Gambling Act 2005 s 230(a).

6 Gambling Act 2005 s 230(b).

UPDATE

460-546 Premises Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(7) GAMING MACHINES/(i) Definitions and Categories/547. Meaning of 'gaming machine'.

(7) GAMING MACHINES

(i) Definitions and Categories

547. Meaning of 'gaming machine'.

In the Gambling Act 2005, 'gaming machine' means a machine¹ which is designed or adapted² for use by individuals to gamble³, whether or not it can also be used for other purposes⁴; but:

- 1817 (1) a domestic⁵ or dual-use computer⁶ is not a gaming machine by reason only of the fact that it can be used to participate in remote gambling⁷;
- 1818 (2) a telephone or other machine for facilitating communication (other than a computer) is not a gaming machine by reason only of the fact that it can be used to participate in remote gambling⁸;
- 1819 (3) a machine is not a gaming machine by reason only of the fact that it is designed or adapted for use to bet⁹ on future real events¹⁰;
- 1820 (4) a machine is not a gaming machine by reason only of the fact that it dispenses lottery tickets¹¹ or otherwise enables a person to enter a lottery¹² provided that the results of the lottery:
 - 111 172. (a) are not determined by the machine; and
 - 173. (b) are not announced by being displayed or communicated by the machine without there being an interval, between each entry to the lottery and the announcement, of at least such duration as the Secretary of State must prescribe by order¹³;
- 112 1821 (5) a machine is not a gaming machine if:
 - 113 174. (a) it is designed or adapted for the playing of bingo¹⁴; and
 - 175. (b) it is used in accordance with a condition attached¹⁵ to a bingo operating licence¹⁶;
- 114 1822 (6) a machine is not a gaming machine if:
 - 115 176. (a) it is designed or adapted for the playing of bingo by way of prize gaming¹⁷; and
 - 177. (b) it is used in accordance with a condition attached¹⁸ to a gaming machine general operating licence¹⁹;
- 116 1823 (7) a machine is not a gaming machine if:
 - 117 178. (a) it is designed or adapted for the playing of bingo by way of prize gaming;
 - 179. (b) it is made available for use in reliance on a family entertainment centre gaming machine permit²⁰ or a prize gaming permit²¹; and
 - 180. (c) any requirements prescribed for these purposes in a code of practice²² as to the specification of the machine, or the circumstances in which it is made available for use, are complied with²³;

118

1824 (8) a machine is not a gaming machine by reason only of the fact that it is designed or adapted to be:

119

181. (a) controlled or operated by an individual employed or concerned in arranging for others to play a real game of chance²⁴; or

182. (b) used in connection with a real game of chance the arrangements for which are controlled or operated by an individual²⁵; and

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1825 (9) a machine is not a gaming machine by reason only of the fact that it is designed or adapted to enable individuals to play a real game of chance, if:

121

183. (a) its design or adaptation is such that it does not require to be controlled or operated by a person employed or concerned in arranging for others to play the game;

184. (b) it is not designed or adapted for use in connection with a game the arrangements for which are controlled or operated by an individual; and

185. (c) it is used in accordance with a condition attached²⁶ to a casino operating licence²⁷.

122

The Secretary of State may make regulations providing for circumstances in which a single piece of apparatus is to be treated as more than one gaming machine for the purpose of provision made by or by virtue of the Gambling Act 2005; and the regulations may, in particular, make provision by reference to the number of persons able to operate the apparatus at the same time²⁸. In the exercise of this power, the Secretary of State has made regulations providing that where a single piece of apparatus is a gaming machine, and is made available for use to more than one person at a time, it is to be treated as the number of gaming machines equal to the number of people able to use it at that time²⁹.

1 As to the meaning of 'machine' see PARA 493 note 13.

2 In the Gambling Act 2005, a reference to a machine being designed or adapted for a purpose includes (1) a reference to a computer being able to be used for that purpose (subject to s 235(2): see heads (1)-(9) in the text); and (2) a reference to any other machine to which anything has been done as a result of which it can reasonably be expected to be used for that purpose (subject to s 235(2)): s 235(3)(b). A reference to adapting a gaming machine includes a reference to adapting a machine so that it becomes a gaming machine: s 235(3)(e).

3 As to the meaning of 'gambling' see PARA 308.

4 Gambling Act 2005 ss 235(1); 353(1).

5 'Domestic computer' has the meaning assigned by the Secretary of State by regulations: Gambling Act 2005 s 235(3)(f). Regulations under s 235(3)(f) may, in particular, make provision by reference to (1) the location of a computer; (2) the purposes for which a computer is used; (3) the circumstances in which a computer is used; (4) the software installed on a computer; or (5) any other matter: s 235(4). For these purposes, a domestic computer is a computer that (a) is capable of being used for a purpose that is not related to gambling; (b) is located in a private dwelling; and (c) if used, is used on a domestic occasion: Gambling Act 2005 (Gaming Machines) (Definitions) Regulations 2007, SI 2007/2082, reg 3. As to the Secretary of State see PARA 2.

6 'Dual-use computer' has the meaning assigned by the Secretary of State by regulations: Gambling Act 2005 s 235(3)(f); and see s 235(4), cited in note 5. A computer is a dual-use computer within the meaning of s 235(2)(a) (see head (1) in the text) if (1) it is capable of being used for a purpose that is not related to gambling; and (2) either (a) it is not knowingly adapted or presented by or on behalf of an owner of the computer or a person connected with such an owner, in such a way as to facilitate, or to draw attention to the possibility of, its use for gambling; or (b) it is so adapted or presented, but only in the circumstances specified in the Gambling Act 2005 (Gaming Machines) (Definitions) Regulations 2007, SI 2007/2082, reg 2(2) or (3): reg 2(1). The circumstances specified in reg 2(1) are that the computer is being made available for use (other than

in circumstances where it is being adapted, maintained or repaired), but its use is restricted or intended to be restricted to private use: reg 2(2). The circumstances specified in reg 2(3) are that the computer is being adapted, maintained or repaired (whether or not it is also being made available for use), but its use is restricted or intended to be restricted to persons using it in connection with its adaptation, maintenance or repair in circumstances where (i) but for its adaptation, maintenance or repair, its use would otherwise be restricted or intended to be restricted to private use; and (ii) enabling or facilitating the use of the computer for gambling is not the main purpose of the adaptation, maintenance or repair: reg 2(3).

'Private use' in relation to a computer means use of the computer by an owner of the computer, or by persons using it with the permission of an owner of the computer, other than under any commercial arrangement in connection with its use; and 'commercial arrangement', in connection with the use of a computer: (A) includes any arrangement under which an owner of the computer, or a person connected with such an owner, makes or receives (or intends to make or reasonably expects to receive) any payment or reward (whether by way of commission, rent or otherwise), in connection with making the computer available for use, or otherwise receives (or reasonably expects to receive) any benefit in connection with making the computer available for use by virtue of it being adapted or presented in such a way as to facilitate or draw attention to the possibility of its use for gambling; (B) does not include an arrangement between an employer and his employee in connection with that employment, other than where a computer is made available to the employee by his employer for use wholly or mainly for recreational purposes: reg 1(2). 'Owner', in relation to a computer, means any person who owns the computer or has any right to control (directly or indirectly) by whom it is used (reg 1(2)); and for these purposes a person is connected with an owner of a computer where (aa) the person and the owner are both companies and one is a subsidiary of the other, or both are subsidiaries of the same company; (bb) the person and the owner are carrying on a business in common with a view to profit; or (cc) the person is the owner's spouse, civil partner, sibling, ancestor, or lineal or collateral descendant (reg 1(3)). 'Company' has the meaning given in the Companies Act 1985 s 735(1)(a) (see **COMPANIES** vol 14 (2009) PARAS 1, 24) and 'subsidiary' has the meaning given in s 736 (see **COMPANIES** vol 14 (2009) PARA 25): Gambling Act 2005 (Gaming Machines) (Definitions) Regulations 2007, SI 2007/2082, reg 1(2). Note that the Companies Act 1985 ss 735(1)(a), 736 are prospectively repealed by the Companies Act 2006 Sch 16, and replaced by ss 1(1), 1159, as from a day to be appointed under s 1300(2); at the date at which this volume states the law, no such day had been appointed.

7 Gambling Act 2005 235(2)(a). As to the meaning of 'remote gambling' see PARA 308.

8 Gambling Act 2005 235(2)(b).

9 As to the meaning of 'betting' see PARA 312.

10 Gambling Act 2005 235(2)(c). As to the meaning of 'real event' see PARA 495 note 12.

11 As to the meaning of 'lottery ticket' see PARA 377 note 8.

12 As to the meaning of 'lottery' see PARA 317. Note that the statutory definition does not include the National Lottery, as to which see PARA 686 et seq.

13 Gambling Act 2005 235(2)(d). For these purposes, where a machine dispenses lottery tickets or otherwise enables a person to enter a lottery, there must be an interval of not less than one hour between each entry to a lottery and any announcement by the machine of the results of that lottery: Gambling (Lottery Machine Interval) Order 2007, SI 2007/2495, art 2.

14 As to the meaning of 'bingo' see PARA 349 note 8.

15 Is a condition attached under the Gambling Act 2005 s 75 or s 77 (see PARA 357) by virtue of s 85(2)(b) (see PARA 365).

16 Gambling Act 2005 235(2)(e). As to the meaning of 'bingo operating licence' see PARA 349 at head (2).

17 As to the meaning of 'prize gaming' see the Gambling Act 2005 ss 288, 353(1); and PARA 592.

18 See note 15.

19 Gambling Act 2005 235(2)(f). As to the meaning of 'gaming machine general operating licence' see PARA 349 at heads (6)-(7).

20 As to the meaning of 'family entertainment centre gaming machine permit' see PARA 562.

21 As to the meaning of 'prize gaming permit' see PARA 592.

22 Is a code of practice under the Gambling Act 2005 s 24: see PARA 337.

23 Gambling Act 2005 235(2)(g).

- 24 As to the meaning of 'game of chance' see PARA 310.
- 25 Gambling Act 2005 235(2)(h).
- 26 See note 15.
- 27 Gambling Act 2005 235(2)(i). As to the meaning of 'casino operating licence' see PARA 349 at head (1).
- 28 Gambling Act 2005 s 235(5).
- 29 See the Gaming Machine (Single Apparatus) Regulations 2007, SI 2007/2289, reg 2.

UPDATE

547-550 Meaning of 'gaming machine' ... Meaning, and sub-categories, of 'Category B gaming machine'

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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548. Categories of gaming machine; in general.

The Secretary of State¹ must make regulations defining four classes of gaming machine² for the purposes of the Gambling Act 2005, to be known as Categories A, B, C, and D³. Such regulations:

- 1826 (1) must divide Category B into sub-categories⁴, and make provision for determining to which sub-category (or sub-categories) of Category B a reference in the Gambling Act 2005 to Category B is to be treated as referring⁵;
- 1827 (2) must operate by reference to the nature of the facilities for gambling⁶ provided⁷ by the machine⁸;
- 1828 (3) may, in particular, make provision by reference to:
 - 123
 - 186. (a) amounts paid in respect of the use of a machine⁹;
 - 187. (b) the value of prizes¹⁰;
 - 188. (c) the nature of prizes¹¹;
 - 189. (d) the nature of the gambling for which the machine can be used¹²;
 - 190. (e) the premises¹³ where a machine is used¹⁴;
 - 124
- 1829 (4) may identify matters, whether or not addressed by other provisions of the regulations as to which a condition may not be attached to an operating licence¹⁵ or to a premises licence¹⁶.

In accordance with such regulations a machine may change category as a result of a change of the mechanism, or the loading or removal of software, which alters the nature of the facilities for gambling provided by the machine¹⁷.

The Gambling Commission¹⁸ has published a number of documents concerning machine standards¹⁹.

1 As to the Secretary of State see PARA 2.

2 As to the meaning of 'gaming machine' see PARA 547.

3 Gambling Act 2005 s 236(1); and see PARAS 549-552.

4 Gambling Act 2005 s 236(2)(a); and see PARA 550.

5 Gambling Act 2005 s 236(2)(b). See the Categories of Gaming Machine Regulations 2007, SI 2007/2158, reg 6; and PARAS 460 note 9, 489 note 4, 493 note 5, 502 note 4, 509 note 8, 628 note 6.

6 As to the meaning of 'gambling' see PARA 308.

7 As to the meaning of 'providing facilities' for gambling see PARA 309.

8 Gambling Act 2005 s 236(3).

9 Gambling Act 2005 s 236(4)(a).

10 Gambling Act 2005 s 236(4)(b). 'Prize' in relation to a gaming machine (1) includes any money, article, right or service won, whether or not described as a prize; but (2) does not include an opportunity to play the machine again: s 239.

11 Gambling Act 2005 s 236(4)(c).

12 Gambling Act 2005 s 236(4)(d).

13 As to the meaning of 'premises' see PARA 311 note 5.

14 Gambling Act 2005 s 236(4)(e).

15 As to the meaning of 'operating licence' see PARA 349 note 2.

16 Gambling Act 2005 s 236(5). As to the meaning of 'premises licence' see PARA 460 note 1.

17 Gambling Act 2005 s 236(6).

18 As to the Gambling Commission see PARA 4.

19 For the relevant documents see Paterson's Licensing Acts (116th Edn, 2008) para 3.2520 et seq. The documents in question are also published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk.

UPDATE

547-550 Meaning of 'gaming machine' ... Meaning, and sub-categories, of 'Category B gaming machine'

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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549. Meaning of 'Category A gaming machine'.

A Category A gaming machine¹ is a gaming machine which is not a Category B², Category C³ or Category D⁴ machine⁵.

- 1 As to the meaning of 'gaming machine' see PARA 547; and as to categories generally see PARA 548.
- 2 As to Category B gaming machines see PARA 550.
- 3 As to Category C gaming machines see PARA 551.
- 4 As to Category D gaming machines see PARA 552.
- 5 Categories of Gaming Machine Regulations 2007, SI 2007/2158, regs 2(1), 7.

UPDATE

547-550 Meaning of 'gaming machine' ... Meaning, and sub-categories, of 'Category B gaming machine'

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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550. Meaning, and sub-categories, of 'Category B gaming machine'.

There are five sub-categories of Category B gaming machine¹ to be known as sub-categories B1, B2, B3, B3A and B4², as follows:

- 125 1830 (1) a gaming machine is a sub-category B4 machine if:
- 191. (a) the maximum charge for use³ is no more than £1;
 - 192. (b) the maximum prize value⁴ is no more than £250; and
 - 193. (c) it is not a Category C⁵ or Category D⁶ machine⁷:
- 126 1831 (2) a gaming machine is a sub-category B3A machine if:
- 194. (a) it enables a person to participate in a lottery⁸ but not in any other form of gambling⁹;
 - 195. (b) it is made available for use by a members' club¹⁰ or a miners' welfare institute¹¹;
 - 196. (c) the maximum charge for use is no more than £1;
 - 197. (d) the maximum prize value is no more than £500; and
 - 198. (e) it is not a sub-category B4 machine or a Category C or Category D machine¹²;
- 128 1832 (3) a gaming machine is a sub-category B3 machine if:
- 199. (a) the maximum charge for use is no more than £1;
 - 200. (b) the maximum prize value is no more than £500; and
 - 201. (c) it is not a sub-category B3A or B4 machine or a Category C or Category D machine¹³;
- 130 1833 (4) a gaming machine is a sub-category B2 machine if:
- 202. (a) the maximum charge for use is no more than £100;
 - 203. (b) the maximum prize value is no more than £500; and
 - 204. (c) it is not a sub-category B3, B3A or B4 machine or a Category C or Category D machine¹⁴;
- 132 1834 (5) a gaming machine is a sub-category B1 machine if:
- 205. (a) the maximum charge for use is no more than £2;
 - 206. (b) the maximum prize value is no more than £4,000; and
 - 207. (c) it is not a sub-category B2, B3, B3A or B4 machine or a Category C or Category D machine¹⁵.
- 134

1 As to the meaning of 'gaming machine' see PARA 547; and as to categories generally see PARA 548.

2 Categories of Gaming Machine Regulations 2007, SI 2007/2158, regs 2(1), 5(1).

3 'Charge for use' means the amount a person pays for using a gaming machine once: Categories of Gaming Machine Regulations 2007, SI 2007/2158, reg 2(1). Subject to reg 2(3), a person is to be treated for these purposes as using a gaming machine once, even where he uses the machine to gamble more than once, if the payment for each gamble is made before he is able to know the result of any of them: reg 2(2). This does not, however, apply in relation to a gaming machine in respect of which (1) the charge for use may only be paid by means of a single coin or token; (2) the coin or token must be inserted into the machine to pay the charge for use; and (3) whether or not a person using the machine wins a prize is determined (wholly or in part) by (a) the position in which the coin or token comes to rest after it has been inserted into the machine, together with the position of other coins or tokens which have previously been inserted into the machine to pay a charge for use; or (b) if the insertion of a single coin to pay the charge for use enables the person using the machine to release one or more tokens within the machine, the position in which such tokens come to rest after being released, together with the position of other tokens which have previously been so released: reg 2(3). 'Token' means an object of money's worth: reg 2(4). As to the meaning of 'prize' see PARA 548 note 10.

4 'Prize value' means the amount or value of any prize which can be won as a result of use of a gaming machine once: Categories of Gaming Machine Regulations 2007, SI 2007/2158, reg 2(1).

5 As to the meaning of 'Category C' gaming machine see PARA 551.

6 As to the meaning of 'Category D' gaming machine see PARA 552.

7 Categories of Gaming Machine Regulations 2007, SI 2007/2158, reg 5(2).

8 As to the meaning of 'lottery' see PARA 317; and as to the meaning of 'participating in a lottery' see PARA 308 note 4.

9 As to the meaning of 'gambling' see PARA 308.

10 As to the meaning of 'members' club' see the Gambling Act 2005 ss 266, 353(1); and PARA 578.

11 As to the meaning of 'miners' welfare institute' see the Gambling Act 2005 ss 268, 353(1); and PARA 580.

12 Categories of Gaming Machine Regulations 2007, SI 2007/2158, reg 5(3).

13 Categories of Gaming Machine Regulations 2007, SI 2007/2158, reg 5(4).

14 Categories of Gaming Machine Regulations 2007, SI 2007/2158, reg 5(5).

15 Categories of Gaming Machine Regulations 2007, SI 2007/2158, reg 5(6).

UPDATE

547-550 Meaning of 'gaming machine' ... Meaning, and sub-categories, of 'Category B gaming machine'

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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551. Meaning of 'Category C gaming machine'.

A gaming machine¹ is a Category C gaming machine² machine if:

- 1835 (1) the maximum charge for use³ is no more than 50 pence;
- 1836 (2) the maximum prize value⁴ is no more than £35; and
- 1837 (3) it is not a Category D⁵ machine⁶.

1 As to the meaning of 'gaming machine' see PARA 547.

2 As to categories generally see PARA 548.

3 As to the meaning of 'charge for use' see PARA 550 note 3.

4 As to the meaning of 'prize value' see PARA 550 note 4.

5 As to the meaning of 'Category D gaming machine' see PARA 552.

6 Categories of Gaming Machine Regulations 2007, SI 2007/2158, regs 2(1), 5(1).

UPDATE

551 Meaning of 'Category C gaming machine'

TEXT AND NOTES 3-6--Reference to SI 2007/2158 regs 2(1), 5(1) should be to SI 2007/2158 regs 2(1), 4. Now, the maximum charge for use is £1 and the maximum prize value is £70: SI 2007/2158 reg 4 (amended by SI 2009/1502).

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552. Meaning of 'Category D gaming machine'.

Where a gaming machine¹ is a non-money prize machine², it is a Category D gaming machine³ if the maximum charge for use⁴ is no more than 30 pence and the maximum prize value⁵ is no more than £8⁶.

Where a gaming machine is a money prize machine⁷, it is a Category D gaming machine if the maximum charge for use is no more than 10 pence and the maximum prize value is no more than £5⁸.

In any other case, a gaming machine is a Category D gaming machine if the maximum charge for use is no more than 10 pence and the maximum prize value is no more than £8, of which no more than £5 can be a money prize⁹.

1 As to the meaning of 'gaming machine' see PARA 547.

2 The reference in the text to a non-money prize machine is to a machine in respect of which every prize which can be won as a result of using the machine is a non-money prize: Categories of Gaming Machine Regulations 2007, SI 2007/2158, reg 3(4). 'Non-money prize' is any prize which is not a money prize: reg 3(6). As to the meaning of 'prize' see PARA 548 note 10; and as to the meaning of 'money prize' see note 7.

3 As to categories generally see PARA 548.

4 As to the meaning of 'charge for use' see PARA 550 note 3.

5 As to the meaning of 'prize value' see PARA 550 note 4.

6 Categories of Gaming Machine Regulations 2007, SI 2007/2158, regs 2(1), 3(1).

7 The reference in the text to a money prize machine is to a machine in respect of which every prize which can be won as a result of using the machine is a money prize: Categories of Gaming Machine Regulations 2007, SI 2007/2158, reg 3(5). Subject to reg 3(7), 'money prize' means a prize (1) in the form of cash or a cheque (or partly in the form of cash and partly in the form of a cheque); or (2) in the form of a document or object which (a) enables the person entitled to it to redeem its value, on the premises where the machine is made available for use, in the form of cash or a cheque (or partly in the form of cash and partly in the form of a cheque); and (b) may, but need not, also enable that person to use it to pay for goods or services available on the premises where the machine is made available for use, including facilities for gambling: reg 3(6). A document or object is not a money prize if it is something which ordinarily is capable of being used for a purpose other than one referred to in reg 3(6)(b) (see head (2) above): reg 3(7). As to the meaning of 'premises' see PARA 311 note 5; and as to the meaning of 'gambling' see PARA 308.

8 Categories of Gaming Machine Regulations 2007, SI 2007/2158, reg 3(2).

9 Categories of Gaming Machine Regulations 2007, SI 2007/2158, reg 3(3).

UPDATE

552 Meaning of 'Category D gaming machine'

TEXT AND NOTES--SI 2007/2158 reg 3 substituted: SI 2009/1502. In addition to non-money prize machines and money prize machines, SI 2007/2158 reg 3 also refers to crane grab machines and coin pusher or penny fall machines.

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(ii) Use of Gaming Machines

553. Power to make regulations.

The Secretary of State¹ may make regulations controlling the circumstances in which a gaming machine² is made available for use³. Such regulations may, in particular, make provision by reference to:

- 1838 (1) the method by which stakes⁴ may be deposited or payments made for the use of a machine⁵;
- 1839 (2) the nature of, or arrangements in respect of receiving or claiming, prizes⁶;
- 1840 (3) rollover of stakes or prizes⁷;
- 1841 (4) the proportion of amounts staked or paid that is returned by way of prizes⁸;
- 1842 (5) the display of information⁹;
- 1843 (6) any other matter relating to the manner in which a machine operates¹⁰.

Such regulations may identify matters, whether or not addressed by other provisions of the regulations, as to which a condition may not be attached to an operating licence¹¹ or to a premises licence¹².

1 As to the Secretary of State see PARA 2.

2 As to the meaning of 'gaming machine' see PARA 547.

3 Gambling Act 2005 s 240(1). Part 10 (ss 235-251, Sch 10) (see PARAS 547 et seq, 560 et seq) applies (1) to anything done in relation to a gaming machine which (or any part of which) is situated in Great Britain; and (2) to anything done in Great Britain in relation to a gaming machine (irrespective of where it is situated): s 251. In the Gambling Act 2005, a reference to a part of a gaming machine: (1) includes a reference to any computer software designed or adapted for use in a gaming machine; but (2) does not include a reference to a component of a gaming machine which does not influence the outcome of a game: s 235(3)(c). As to the meaning of 'Great Britain' see PARA 16 note 8.

In the exercise of his power under s 240 the Secretary of State has made the Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, which came into force for most purposes on 1 September 2007: see reg 1(2). Regulation 3(1)(a), (5)(b) (see PARA 554) came into force on 1 November 2007 (reg 1(3)); and regs 10, 11 (see PARAS 556, 557) came into force on 1 March 2008 (reg 1(4)). See further PARA 554 et seq.

4 As to the meaning of 'stake' see PARA 312 note 6.

5 Gambling Act 2005 s 240(2)(a). As to the meaning of 'machine' see PARA 493 note 13.

6 Gambling Act 2005 s 240(2)(b). As to the meaning of 'prize' see PARA 548 note 10.

7 Gambling Act 2005 s 240(2)(c).

8 Gambling Act 2005 s 240(2)(d).

9 Gambling Act 2005 s 240(2)(e).

10 Gambling Act 2005 s 240(2)(f).

11 As to the meaning of 'operating licence' see PARA 349 note 2.

12 Gambling Act 2005 s 240(3). As to the meaning of 'premises licence' see PARA 460 note 1.

UPDATE

553-555 Power to make regulations ... Methods of payment and minimum payment amount

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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554. Display of information.

A gaming machine¹ must display the following information:

- 1844 (1) the category², or sub-category, of the machine;
- 1845 (2) the name and telephone number of a person from whom assistance may be obtained by people who are or may be affected by problems related to gambling³; and
- 1846 (3) unless it is a Category D gaming machine⁴, information constituting a warning that the machine is not to be used by a child⁵ or young person⁶.

A gaming machine must also display information about the proportion of amounts paid to use the machine that is returned by way of prizes⁷ or about the odds of winning prizes from use of the machine⁸; but this does not apply to a Category D gaming machine in relation to which there is no mechanism for recording the aggregate of amounts paid to use the machine and the aggregate of amounts won as prizes; in such a case the machine must display information stating that the machine provides facilities for gambling⁹. A gaming machine is otherwise to be treated as having complied with the requirement to display the above-mentioned information¹⁰ if:

- 1847 (a) a notice is displayed on the machine at all times when it is made available for use indicating where that information can be found; and
- 1848 (b) that information is held by or in relation to the machine in a way that makes it readily accessible by a person using the machine¹¹.

Subject to heads (a) and (b) above, the required information¹²:

- 1849 (i) must be displayed on the machine at all times when the machine is made available for use;
- 1850 (ii) in the case of head (1) above, must be displayed on the machine in a manner which makes it readily visible to a person inspecting the machine while it is being made available for use; and
- 1851 (iii) in all other cases must be displayed on the machine in a manner which makes it readily visible to a person using the machine¹³.

Information displayed in accordance with these provisions may take the form of any combination of letters, numbers or symbols¹⁴.

1 As to the meaning of 'gaming machine' see PARA 547.

2 For these purposes, 'category', in relation to a gaming machine, means the category of machine as defined in regulations made under the Gambling Act 2005 s 236 (see PARA 548); and 'Category A', or B, C or D means that Category (or in the case of Category B, sub-category) as defined in such regulations (see PARAS 549-552): Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 2(1).

3 As to the meaning of 'gambling' see PARA 308.

- 4 As to the meaning of 'Category D gaming machine' see PARA 552 (definition applied for these purposes: see note 2).
- 5 As to the meaning of 'child' see PARA 331 note 2.
- 6 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 3(1). As to the meaning of 'young person' see PARA 353 note 5.
- 7 As to the meaning of 'prize' see PARA 548 note 10.
- 8 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 3(2).
- 9 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 3(4). As to the meaning of 'providing facilities' for gambling see PARA 309.
- 10 Is the requirement in the Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 3(2): see the text and notes 7-8.
- 11 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 3(3).
- 12 Is the information required by the Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 3(1), (2), (4): see the text and notes 1-9.
- 13 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 3(5).
- 14 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 3(6).

UPDATE

553-555 Power to make regulations ... Methods of payment and minimum payment amount

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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555. Methods of payment and minimum payment amount.

A gaming machine¹ must not be made available for use if it is designed or adapted² to permit money to be paid by means of a credit card³ or debit card⁴; and a person making a gaming machine available for use must not participate in, arrange, permit or knowingly facilitate payment of a charge for use⁵ by means of a credit card⁶.

A gaming machine must not be made available for use if a person can use the machine to gamble once by paying an amount which is not a whole number of pence⁷.

1 As to the meaning of 'gaming machine' see PARA 547.

2 As to the meaning of 'designed or adapted' see PARA 547 note 2.

3 For these purposes, 'credit card' means a credit-token within the meaning of the Consumer Credit Act 1974 s 14 (see **CONSUMER CREDIT** vol 9(1) (Reissue) PARA 88): Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 4(3).

4 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 4(1). For these purposes, 'debit card' means a card enabling payment to be debited against a person's banking account, and which is not a credit card: reg 4(3).

5 'Charge for use' means the amount a person pays for using a gaming machine once: Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 2(1).

For these purposes, a person is to be treated as using a gaming machine once, even where he uses the machine to gamble more than once, if the payment for each gamble is made before he is able to know the result of any of them: reg 2(2). That does not, however, apply in relation to a gaming machine in respect of which (1) the charge for use may only be paid by means of a single coin or token; (2) the coin or token must be inserted into the machine to pay the charge for use; and (3) whether or not a person using the machine wins a prize is determined (wholly or in part) by (a) the position in which the coin or token comes to rest after it has been inserted into the machine, together with the position of other coins or tokens which have previously been inserted into the machine to pay a charge for use; or (b) if the insertion of a single coin to pay the charge for use enables the person using the machine to release one or more tokens within the machine, the position in which such tokens come to rest after being released, together with the position of other tokens which have previously been so released: reg 2(3). 'Token' means an object of money's worth: reg 2(4). As to the meaning of 'gamble' see PARA 308.

6 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 4(2).

7 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 5.

UPDATE

553-555 Power to make regulations ... Methods of payment and minimum payment amount

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue)
PARA 196A.

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556. Payment limits.

Subject to the provisions about committed payment limits set out below¹, where a gaming machine² is made available for use, a person must not be able, by means of a single action, to make a payment in respect of the use of the machine which exceeds, in any case to which heads (1) to (6) below apply, the amount specified in the relevant provision³, as follows:

- 1852 (1) in relation to a Category A machine⁴ where the payment is of money or money's worth⁵, and a Category B⁶ or Category C machine⁷, where the payment is of money, the amount is £20⁸;
- 1853 (2) in relation to a Category B or Category C machine where the payment is of money's worth, and either the machine is manufactured on or after 1 September 2007, or it is a non-compliant machine⁹, the amount is £20¹⁰;
- 1854 (3) in relation to a Category B1, B2 or B3 machine where:
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 - 208. (a) the payment is of money's worth;
 - 209. (b) the payment satisfies the supervision condition¹¹, the collection condition¹², or partly satisfies the supervision condition, with the payment of the remaining amount satisfying the collection condition;
 - 210. (c) the machine was manufactured before 1 September 2007; and
 - 211. (d) immediately before that date the machine was designed or adapted¹³ for payments of money's worth to be made in relation to its use,
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 - 1855 the amount is £100¹⁴;
 - 1856 (4) in relation to a Category B1, B2 or B3 machine which meets the conditions in heads (3)(a) to (c) above but in respect of which the condition in head (3)(d) above is not met, the amount is £20¹⁵;
 - 1857 (5) in relation to a Category B3A or B4 or a Category C machine where the payment is of money's worth, and the machine was manufactured before 1 September 2007, the amount is £20¹⁶;
 - 1858 (6) in relation to a Category D machine¹⁷, where the payment is of money or money's worth, the amount is £2¹⁸.

Where a person makes a payment in respect of a gaming machine, only those amounts of the payment which are used to pay a charge for use¹⁹, or held to the credit of a person using the machine, are to be counted for the above purposes²⁰.

Nothing in the above provisions prevents a person, by means of a series of actions, from making one or more payments which exceed the limits specified in heads (1) to (6) above provided that in each case the amount paid by means of a single action complies with the relevant limit²¹.

Where a Category A, B or C gaming machine is made available for use, a person must not be able, by means of a single action, to make a committed payment²² in respect of the use of the machine which exceeds:

- 1859 (i) in relation to a Category A, B1, B2, B3 or B3A machine, £10²³; or
- 1860 (ii) in relation to a Category B4 or Category C machine, £5²⁴.

Where a person using a gaming machine performs an action whose effect is to cause an amount held as part of the deposited sum²⁵ to be used to pay a charge for use in respect of the machine, held by or in relation to the machine as a committed amount, or partly used to pay a charge for use, with the remaining amount held by or in relation to the machine as a committed amount, that action is to be treated for these purposes as the making of a committed payment²⁶. Nothing in these provisions, however, prevents a person, by means of a series of actions, from making one or more payments which exceed the limits specified in heads (i) and (ii) above provided that in each case the amount paid by means of a single action complies with the relevant limit²⁷.

The limit specified in head (i) above does not, however, apply to the payment, in relation to a Category A or Category B2 gaming machine which is designed or adapted to allow a person to pay a charge for use by using an amount of the deposited sum in relation to the machine, of a charge for use which exceeds £10; and, instead, any such payment is subject to the following provisions²⁸. Where the machine is made available for use, the arrangements for the use of the machine must ensure that, for each permitted amount²⁹ that a person wants to include in the amount he pays as a charge for use, he performs a separate action in relation to the machine to indicate that he wants to use that amount for that purpose³⁰; but that does not apply where the conditions set out in head (A) below, and either the conditions set out in head (B) or head (C) below, are met³¹. Those conditions are as follows:

1861 (A) the conditions are that:

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212. (aa) a person has previously paid a charge for use of an amount which exceeds £10;

213. (bb) the payment for that charge for use was made in accordance with the relevant provisions³²;

214. (cc) a person has used the machine in relation to that charge for use; and

215. (dd) before another person has paid to use the machine, the person referred to in head (aa) above pays a further charge for use in respect of the machine³³;

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1862 (B) where the charge for use referred to in head (A)(dd) above does not exceed the amount referred to in head (A)(aa) above, a person is required to take at least two separate actions in relation to the machine in order to pay the charge for use³⁴;

1863 (C) where the charge for use referred to in head (A)(dd) above exceeds the amount referred to in head (A)(aa) above, a person is required to perform at least the required actions³⁵ in relation to the machine in order to pay that charge for use³⁶.

1 le subject to the Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 9: see the text and notes 22-27.

2 As to the meaning of 'gaming machine' see PARA 547.

3 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 7(1).

4 As to the meaning of 'Category A machine' see PARA 549 (definition applied: see PARA 554 note 2).

5 For these purposes, 'payment of money's worth' includes circumstances where (1) a person pays money in relation to use of a gaming machine; and (2) that payment is made otherwise than by inserting money into the machine: Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 7(10).

6 As to the meaning of 'Category B machine' see PARA 550 (definition applied: see PARA 554 note 2).

7 As to the meaning of 'Category C machine' see PARA 551 (definition applied: see PARA 554 note 2).

8 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 7(2).

9 'Non-compliant machine' means a Category B gaming machine manufactured before 1 September 2007 which does not comply with the condition in the Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 7(4)(d) (see head (3)(d) in the text): reg 7(10).

10 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 7(3). In the case of a gaming machine manufactured before 1 March 2008, this limit did not apply until 1 September 2008: see reg 8(2).

11 The supervision condition is that a payment of money's worth in respect of the use of a Category B1, B2 or B3 gaming machine must (1) be made by means of a document or object which is purchased or obtained from a person acting in the course of a business carried on by an authorised person; or (2) be processed by a person acting in the course of such a business: Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 7(8). 'Authorised person' means a person who holds an operating licence which authorises making gaming machines available for use: reg 7(10). As to the meaning of 'operating licence' see PARA 349 note 2.

12 The collection condition is that a payment of money's worth in respect of the use of a Category B1, B2 or B3 gaming machine must be made by means of (1) a document or object collected as a prize from use of a gaming machine; or (2) a document or object delivered by a gaming machine as a means of returning an amount held to the credit of the person using the machine: Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 7(9). As to the meaning of 'prize' see PARA 548 note 10.

13 As to the meaning of 'designed or adapted' see PARA 547 note 2.

14 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 7(4). This limit did not apply before 1 September 2008: see reg 8(1)(a).

15 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 7(5).

16 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 7(6). This limit did not apply before 1 September 2008: see reg 8(1)(b).

17 As to the meaning of 'Category D machine' see PARA 552 (definition applied: see PARA 554 note 2).

18 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 7(7).

19 As to the meaning of 'charge for use' see PARA 555 note 5.

20 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 7(11).

21 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 7(12).

22 A 'committed payment' is a payment of money or money's worth where (1) the whole amount is used to pay a charge for use in respect of a gaming machine; (2) the whole amount is held by or in relation to a gaming machine as a committed amount; or (3) part is used to pay a charge for use, with the remaining amount being held by or in relation to the machine as a committed amount: Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 9(3). 'Committed amount', in relation to a gaming machine, means an amount of money or money's worth (a) held to the credit of a person using the machine for the purposes of paying one or more charges for use; and (b) which, immediately after it is paid or (as the case may be) immediately after the action referred to in reg 9(7) (see the text and notes 25-26) is taken in relation to it, is not recoverable by a person using the machine: regs 2(1), 9(4). Where a part (but not the whole) of a payment is treated in one of the ways described in reg 9(3) the amount of that part of the payment must not exceed the limit specified in reg 9(2) in relation to the relevant category of machine: reg 9(5). Regulation 9(5) is without prejudice to any limit which may apply to the whole of the payment by virtue of reg 7 (see the text and notes 1-21): reg 9(6).

23 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 9(2)(a). This limit did not apply, in the case of a Category A or B2 gaming machine which is designed or adapted to allow a person to pay a charge for use by using an amount of the deposited sum in relation to the machine, until 1 March 2008: see reg 9(10). Regulation 9 is subject to reg 11 (see the text and notes 28-36): reg 9(1).

24 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 9(2)(b); and see note 23.

25 'The deposited sum', in relation to a gaming machine, means the amount of money or money's worth (1) which for the time being is held by or in relation to the machine to the credit of a person using the machine;

and (2) none of which is held as a committed amount: Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, regs 2(1), 9(9).

26 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 9(7).

27 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 9(8).

28 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 11(1), (2).

29 For these purposes, 'permitted amount' is an amount not exceeding £10: Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 11(4).

30 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 11(3).

31 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 11(5).

32 In accordance with the Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 11(3) (see the text to note 30) or reg 11(5)-(8) (see the text to note 31; and heads (A)-(C) in the text).

33 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 11(6).

34 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 11(7).

35 For these purposes, the required actions are (1) a separate action to indicate that he wants to include the original sum in the amount he pays for the charge for use; (2) a further separate action for each permitted amount in addition to the original sum that he wants to include in that amount; and (3) a further separate action to pay the total amount as the charge for use: Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 11(9). 'The original sum' means the amount referred to in reg 11(6)(a) (see head (A) (aa) in the text): reg 11(10).

36 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 11(8).

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557. Autoplay.

The following provisions apply to a gaming machine¹, other than a casino jackpot gaming machine², which is made available for use, and is designed or adapted³ to allow a charge for use⁴ to be paid by using an amount of the deposited sum⁵ in relation to the machine⁶. A charge for use in respect of such a gaming machine must not be payable by means of an autoplay facility⁷; but this prohibition does not apply to a gaming machine which is designed or adapted so that it meets the conditions set out below⁸.

The first condition is that:

- 1864 (1) a person using the machine is required to perform at least one action in relation to the machine to make an amount of the deposited sum capable of being used to pay a charge for use by means of an autoplay facility; and
- 1865 (2) any such action is in addition to a separate action that the person is required to perform to cause the whole or part of that amount to be used to pay more than one charge for use by means of such a facility⁹.

The second condition is that each amount dealt with in accordance with head (1) above does not exceed:

- 1866 (a) in relation to a Category A gaming machine¹⁰, or a Category B1, B2, B3, or B3A gaming machine¹¹, £10; and
- 1867 (b) in relation to a Category B4 or Category C gaming machine¹², £5¹³.

1 As to the meaning of 'gaming machine' see PARA 547.

2 'Casino jackpot gaming machine' means a gaming machine which (1) immediately before 1 September 2007 was (a) a machine to which the Gaming Act 1968 Pt 3 (repealed) applied; and (b) designed or adapted to be used for gaming in accordance with s 31 (repealed) on premises in respect of which a licence under that Act was in force, other than bingo club premises (as defined in s 20 (repealed)); and (2) on or after 1 September 2007 is not adapted, other than to alter its maximum charge for use or prize value, or to comply with the requirements of the Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 3 (see PARA 554); reg 10(6). 'Prize value' means the amount or value of any prize which can be won as a result of use of a gaming machine once: reg 2(1). As to when a machine is used once see PARA 555 note 5; and as to the meaning of 'prize' see PARA 548 note 10.

3 As to the meaning of 'designed or adapted' see PARA 547 note 2.

4 As to the meaning of 'charge for use' see PARA 555 note 5.

5 As to the meaning of 'the deposited sum' see PARA 556 note 25.

6 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 10(1).

7 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 10(2). 'Autoplay facility' means any facility which enables a person using a gaming machine to pay more than one charge for use in respect of the machine without performing at least one separate action in respect of each charge for use: reg 10(6). The prohibition in reg 10(2) did not apply, in the case of a gaming machine manufactured before 1 March 2008, until 1 September 2008: regs 2(1), 10(7).

8 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 10(3).

- 9 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 10(4).
- 10 As to the meaning of 'Category A gaming machine' see PARA 549 (definition applied: see PARA 554 note 2).
- 11 As to the meaning of 'Category B gaming machine' see PARA 550 (definition applied: see PARA 554 note 2).
- 12 As to the meaning of 'Category C gaming machine' see PARA 551 (definition applied: see PARA 554 note 2).
- 13 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 10(5).

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558. Prizes.

A Category A¹, Category B² or Category C³ gaming machine⁴ must not provide an opportunity to win a non-money prize⁵ from use of the machine⁶; and a Category D gaming machine⁷ must not provide an opportunity to win a proscribed non-money prize⁸ from use of the machine⁹.

Where:

- 1868 (1) a gaming machine is made available for use,
- 1869 (2) a person wins a prize by using that machine ('the winner'); and
- 1870 (3) the prize is not made available automatically for collection¹⁰ from the machine at the time of winning,

the arrangements with respect to prizes won using the machine must comply with the following provisions¹¹. If the prize won is a non-money prize:

- 1871 (a) the machine must provide the winner with the means for collecting that prize;
- 1872 (b) information about the type of prize won must be displayed on the machine or upon the premises where the machine is situated; and
- 1873 (c) where the prize is not held by the machine, the prize must be available for collection by the winner, or a person claiming under him at the premises where the machine is situated, and at a time when gaming machines are available for use on those premises¹².

If the prize won is a money prize:

- 1874 (i) the machine must provide the winner with information about the amount of the prize he has won;
- 1875 (ii) the winner must have an opportunity to collect the whole amount of the prize¹³; and
- 1876 (iii) where the prize is not held by the machine it must be available for collection by the winner, or a person claiming under him at the premises where the machine is situated, and at a time when gaming machines are available for use on those premises¹⁴.

If the prize won is a money prize, the machine must not operate in a way so that the prize, if it is not collected by the winner, is automatically used to pay a charge for use¹⁵ in respect of the machine, held by or in relation to the machine as a committed amount¹⁶, or partly used to pay a charge for use, with the remaining amount of the prize held by or in relation to the machine as a committed amount¹⁷.

Where a money prize is won by using a gaming machine which is designed or adapted¹⁸ to enable a person to pay a charge for use by using an amount of the deposited sum, and the prize:

- 1877 (A) in relation to a Category A, B1, B2, B3 or B3A machine, exceeds £50;

- 1878 (B) in relation to a Category B4 or Category C machine, exceeds £10; or
 1879 (C) in relation to a Category D machine, is a money prize of any amount,

the prize may not be added to the deposited sum in relation to the machine until the winner has first had an opportunity to collect the full amount of the prize¹⁹. Where, however, a money prize is won by using a gaming machine which is designed or adapted to allow a charge for use to be paid by means of an autoplay facility²⁰, that provision does not apply; but the prize may not be made available to pay a charge for use in relation to that machine unless the winner is required to perform at least one action in relation to the machine to make an amount of the prize capable of being used to pay a charge for use by means of an autoplay facility, and any such action is in addition to a separate action that the person is required to perform to cause the whole or part of that prize to be used to pay more than one charge for use by means of such a facility²¹.

- 1 As to the meaning of 'Category A gaming machine' see PARA 549 (definition applied: see PARA 554 note 2).
- 2 As to the meaning of 'Category B gaming machine' see PARA 550 (definition applied: see PARA 554 note 2).
- 3 As to the meaning of 'Category C gaming machine' see PARA 551 (definition applied: see PARA 554 note 2).
- 4 As to the meaning of 'gaming machine' see PARA 547.
- 5 'Non-money prize' is any prize which is not a money prize: Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 2(5). 'Money prize' means a prize (1) in the form of cash or a cheque (or partly in the form of cash and partly in the form of a cheque); or (2) in the form of a document or object which (a) enables the person entitled to it to redeem its value, on the premises where the machine is made available for use, in the form of cash or a cheque (or partly in the form of cash and partly in the form of a cheque); and (b) may, but need not, also enable that person to use it to pay for goods or services otherwise available on the premises where the machine is made available for use, including facilities for gambling: reg 2(5). A document or object is not a money prize if it is something which ordinarily is capable of being used for a purpose other than one referred to in reg 2(5)(b) (see head (2) above): reg 2(6). As to the meaning of 'prize' see PARA 548 note 10; as to the meaning of 'premises' see PARA 311 note 5; and as to the meaning of 'gambling' see PARA 308.
- 6 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 6(1).
- 7 As to the meaning of 'Category D gaming machine' see PARA 552 (definition applied: see PARA 554 note 2).
- 8 For these purposes, 'proscribed non-money prize' means a good or service which it is illegal to supply or sell to a child or young person under the laws of the place where the gaming machine is made available for use: Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 6(3). As to the meaning of 'child' see PARA 331 note 2; and as to the meaning of 'young person' see PARA 353 note 5.
- 9 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 6(2).
- 10 For these purposes, a reference to a machine making a prize available for collection automatically is to a machine making available a prize for collection without the person who has won the prize being required to perform any action to make it available: Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 13(7)(a).
- 11 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 13(1).
- 12 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 13(2).
- 13 Where a gaming machine (1) was manufactured before 1 September 2007; and (2) is not adapted on or after 1 September 2007, other than to alter its maximum charge for use or prize value or to comply with the requirements of the Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 3 (see PARA 554), reg 13(3)(b) (see head (ii) in the text) is to be treated as having been complied with where the whole amount of the prize is added to the deposited sum in relation to the machine, even if the effect of doing so is that an amount of the prize will not be recoverable by virtue of reg 12 (see PARA 559): reg 13(5). As to the meaning of 'the deposited sum' see PARA 556 note 25; and as to the meaning of 'prize value' see PARA 557 note 2. The requirement imposed by reg 13(3)(b) did not apply until 1 September 2008 in the case of (a) a gaming machine manufactured between 1 September 2007 and 29 February 2008; or (b) a non-compliant machine: reg

13(6). A reference to a 'non-compliant machine' means a gaming machine manufactured before 1 September 2007 which does not comply with the conditions in reg 13(5)(b) (see head (2) above): reg 13(7)(b).

14 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 13(3).

15 As to the meaning of 'charge for use' see PARA 555 note 5.

16 As to the meaning of 'committed amount' see PARA 556 note 22.

17 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 13(4).

18 As to the meaning of 'designed or adapted' see PARA 547 note 2.

19 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 14(1). The requirement imposed by reg 14(1) did not apply in the case of a gaming machine manufactured before 1 March 2008, until 1 September 2008: reg 14(3).

20 le in accordance with the Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 10(3)-(5): see PARA 557. As to the meaning of 'autoplay facility' see PARA 557 note 7.

21 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 14(2).

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559. Residues.

A gaming machine¹ which is made available for use may not retain the deposited sum² in relation to the machine (referred to below as retaining a 'residue') unless the deposited sum:

- 1880 (1) consists entirely of cash held by the machine;
- 1881 (2) is an amount of less than £1; and
- 1882 (3) cannot be recovered because the machine cannot pay the correct denomination of coins equal to the amount to be recovered, and the machine has no alternative means for paying the amount to the person seeking to recover it³.

Where a gaming machine, which is designed or adapted⁴ to retain a residue as so permitted, is made available for use:

- 1883 (a) the machine must display a warning of that fact, stating the maximum amount which the machine is designed or adapted to retain; and
- 1884 (b) the amount of any such residue must be made available for paying the whole or part of a further charge for use⁵ in relation to the machine and for no other purpose⁶.

Where a gaming machine is designed or adapted to hold an amount of money or money's worth as a committed amount⁷, any such amount may only be used for paying the whole or part of a further charge for use in relation to the machine and for no other purpose⁸.

1 As to the meaning of 'gaming machine' see PARA 547.

2 As to the meaning of 'the deposited sum' see PARA 556 note 25.

3 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 12(1).

4 As to the meaning of 'designed or adapted' see PARA 547 note 2.

5 As to the meaning of 'charge for use' see PARA 555 note 5.

6 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 12(2).

7 As to the meaning of 'committed amount' see PARA 556 note 22.

8 Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007/2319, reg 12(3).

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(iii) Supply etc of Gaming Machines

560. Power to make regulations.

The Secretary of State¹ may make regulations about the supply², installation³, adaptation⁴, maintenance or repair of a gaming machine or part of a gaming machine⁵. Such regulations may identify matters, whether or not addressed by other provisions of the regulations, as to which a condition may not be attached to an operating licence⁶ or to a premises licence⁷.

1 As to the Secretary of State see PARA 2.

2 As to the meaning of 'supply' see PARA 349 note 17.

3 In the Gambling Act 2005, a reference to installing a part of a gaming machine includes a reference to installing computer software for the purpose of altering the operation of a gaming machine: s 235(3)(d). As to the meaning of 'gaming machine' see PARA 547; as to the meaning of 'part of a gaming machine' see PARA 553 note 3; and as to the meaning of 'installing computer software' see PARA 349 note 18.

4 As to the meaning of 'adapting' a gaming machine see PARA 547 note 2.

5 Gambling Act 2005 s 241(1). As to the territorial application of s 241 see PARA 553 note 3. In the exercise of his power under s 241 the Secretary of State has made the Gaming Machine (Supply etc) Regulations 2007, SI 2007/2320, which came into force on 1 September 2007: reg 1. See further PARA 561.

6 As to the meaning of 'operating licence' see PARA 349 note 2.

7 Gambling Act 2005 s 241(2). As to the meaning of 'premises licence' see PARA 460 note 1.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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561. Prohibition of supply or installation of certain gaming machines.

A gaming machine¹ must not be supplied² or installed if it is designed or adapted³ to permit money to be paid by means of a credit card⁴ or debit card⁵.

Failure to comply with this prohibition is an offence⁶.

1 As to the meaning of 'gaming machine' see PARA 547.

2 As to the meaning of 'supply' see PARA 349 note 17.

3 As to the meaning of 'designed or adapted' see PARA 547 note 2.

4 For these purposes, 'credit card' means a credit-token within the meaning of the Consumer Credit Act 1974 s 14 (see **CONSUMER CREDIT** vol 9(1) (Reissue) PARA 88): Gaming Machine (Supply etc) Regulations 2007, SI 2007/2320, reg 2(2)(a).

5 Gaming Machine (Supply etc) Regulations 2007, SI 2007/2320, reg 2(1). For these purposes, 'debit card' means a card enabling payment to be debited against a person's banking account, and which is not a credit card: reg 2(2)(b).

6 See the Gambling Act 2005 s 243(2)(b); and PARA 639.

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(iv) Family Entertainment Centre Gaming Machine Permits

562. Nature and form of permit.

A family entertainment centre¹ gaming machine² permit ('a permit') is a permit issued by a licensing authority³ authorising⁴ a person to make Category D gaming machines⁵ available for use in a specified family entertainment centre⁶. Such a permit may not be issued in respect of a vehicle⁷ or vessel⁸ or part of a vehicle or vessel⁹.

A permit must be in the prescribed form¹⁰ and must specify the person to whom it is issued, the premises¹¹, and the date on which it takes effect¹².

Such permits allow Category D gaming machines to be made available for use without an operating licence¹³ or a premises licence¹⁴ in circumstances which would otherwise constitute an offence¹⁵.

1 As to the meaning of 'family entertainment centre' see PARA 349 note 15.

2 As to the meaning of 'gaming machine' see PARA 547.

3 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARA 563 note 7.

4 As to the meaning of 'authorise' see PARA 349 note 5.

5 As to the meaning of 'Category D gaming machine' see PARA 552.

6 Gambling Act 2005 s 247(2).

7 As to the meaning of 'vehicle' see PARA 311 note 5.

8 As to the meaning of 'vessel' see PARA 311 note 5.

9 Gambling Act 2005 Sch 10 para 24.

10 'Prescribed' means prescribed by regulations made by the Secretary of State: Gambling Act 2005 Sch 10 para 1. As to the Secretary of State see PARA 2. For the prescribed form of permit see the Gambling Act 2005 (Family Entertainment Centre Gaming Machine) (Permits) Regulations 2007, SI 2007/454, reg 4, Sch 1.

11 For these purposes, 'the premises', in relation to an application or permit, means the premises in respect of which the permit is sought or issued: Sch 10 para 1. As to the meaning of 'premises' see PARA 311 note 5.

12 Gambling Act 2005 Sch 10 para 11(1).

13 As to the meaning of 'operating licence' see PARA 349 note 2.

14 As to the meaning of 'premises licence' see PARA 460 note 1.

15 See the Gambling Act 2005 s 247(1). As to the offences which would otherwise be committed see s 37; and PARA 616; s 242; and PARA 638.

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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563. Application for permit.

An application for a family entertainment centre gaming machine permit¹ ('a permit') may be made only by a person who occupies or proposes to occupy the premises², and who proposes to use the premises as an unlicensed family entertainment centre³. If the applicant for a permit is an individual, he must be an adult⁴.

An application for a permit may not be made if a premises licence⁵ has effect in respect of the premises⁶.

An application for a permit must be made to a licensing authority⁷ in whose area the premises are wholly or partly situated⁸. Such an application must:

- 1885 (1) be made in such form and manner as the licensing authority⁹ may direct;
- 1886 (2) specify the premises in respect of which the permit is sought;
- 1887 (3) contain or be accompanied by such other information or documents as the licensing authority may direct; and
- 1888 (4) be accompanied by the prescribed fee¹⁰.

1 As to the meaning of 'family entertainment centre gaming machine permit' see PARA 562.

2 As to the meaning of 'the premises' see PARA 562 note 11; and as to the meaning of 'premises' see PARA 311 note 5. See also the Gambling Act 2005 Sch 10 para 24, cited in PARA 562.

3 Gambling Act 2005 Sch 10 para 2(1). As to the meaning of 'family entertainment centre' see PARA 349 note 15.

4 Gambling Act 2005 Sch 10 para 2(2). As to the meaning of 'adult' see PARA 372 note 7.

5 As to the meaning of 'premises licence' see PARA 460 note 1.

6 Gambling Act 2005 Sch 10 para 3.

7 As to the licensing authorities see PARA 3. The Gambling Act 2005 s 154 (delegation of functions to licensing committees and sub-committees: see PARAS 466-468) has effect in relation to the functions of a licensing authority under Sch 10 as it has effect in relation to the functions of a licensing authority under Pt 8 (ss 150-213, Sch 9) (see PARA 460 et seq): Sch 10 para 6.

8 Gambling Act 2005 Sch 10 para 4.

9 'The licensing authority' in relation to an application, means the licensing authority to which the application is made, and in relation to a permit, means the licensing authority which issues it: Gambling Act 2005 Sch 10 para 1.

10 Gambling Act 2005 Sch 10 para 5. As to the meaning of 'prescribed' see PARA 562 note 10. The fee to accompany an application for a permit is £300, unless the application was made before 1 September 2007 by an existing operator, in which case the fee was £100: see the Gambling Act 2005 (Family Entertainment Centre Gaming Machine) (Permits) Regulations 2007, SI 2007/454, reg 3(a), (b). 'Existing operator' means a person who (1) made an application for a permit before 1 September 2007; (2) on the date on which he made the application, either held a permit issued under the Gaming Act 1968 s 34 (repealed) (a 'section 34 permit'), or was applying to the appropriate authority (within the meaning of the Gaming Act 1968 Sch 9 para 1 (repealed)) for a section 34 permit, and the application (including any appeal) had not been finally determined; and (3) the application related to the same or substantially the same premises as those to which the section 34 permit, or

the application for a section 34 permit, related: see the Gambling Act 2005 (Family Entertainment Centre Gaming Machine) (Permits) Regulations 2007, SI 2007/454, reg 2(1).

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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564. Consideration and determination of the application.

A licensing authority¹ may prepare a statement of principles that it proposes to apply in exercising its functions² with regard to family entertainment centre gaming machine permits ('permits')³. Such a statement may, in particular, specify matters that the licensing authority proposes to consider in determining the suitability of an applicant for a permit⁴. In exercising those functions a licensing authority need not, but may, have regard to the licensing objectives⁵. The licensing authority must, however, have regard to any relevant guidance issued⁶ by the Gambling Commission⁷.

On considering an application for a permit a licensing authority may either grant it or refuse it⁸. A licensing authority may not attach conditions to a permit⁹.

A licensing authority may grant an application for a permit only if the authority is satisfied that the applicant intends to use the premises¹⁰ as an unlicensed family entertainment centre¹¹, and the authority has consulted the chief officer of police¹² for a police area in which the premises are wholly or partly situated¹³. As soon as is reasonably practicable after granting an application a licensing authority must issue a permit to the applicant¹⁴.

A licensing authority may not refuse an application unless it has notified the applicant of its intention to refuse the application and of its reasons¹⁵, and has given the applicant an opportunity to make either oral or written representations, or both oral and written representations¹⁶. As soon as is reasonably practicable after refusing an application a licensing authority must notify¹⁷ the applicant of the refusal, and of the reasons for it¹⁸.

1 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARA 563 note 7.

2 I.e. its functions under the Gambling Act 2005 Sch 10: see PARA 563; the text and notes 3-18; and PARA 565 et seq.

3 See the Gambling Act 2005 Sch 10 para 7(1). As to the meaning of 'family entertainment centre gaming machine permit' see PARA 562.

4 Gambling Act 2005 Sch 10 para 7(2).

5 Gambling Act 2005 Sch 10 para 7(3)(a). As to the licensing objectives see PARA 331.

6 I.e. issued under the Gambling Act 2005 s 25: see PARA 338.

7 Gambling Act 2005 Sch 10 para 7(3)(b). As to the Gambling Commission see PARA 4.

8 Gambling Act 2005 Sch 10 para 8(1).

9 Gambling Act 2005 Sch 10 para 8(2).

10 As to the meaning of 'the premises' see PARA 562 note 11; and as to the meaning of 'premises' see PARA 311 note 5. See also the Gambling Act 2005 Sch 10 para 24, cited in PARA 562.

11 As to the meaning of 'family entertainment centre' see PARA 349 note 15.

12 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

- 13 Gambling Act 2005 Sch 10 para 9.
- 14 Gambling Act 2005 Sch 10 para 8(3).
- 15 Gambling Act 2005 Sch 10 para 10(1)(a).
- 16 See the Gambling Act 2005 Sch 10 para 10(1)(b), (2).
- 17 As to the method of notification see PARA 356 note 5.
- 18 Gambling Act 2005 Sch 10 para 8(4).

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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565. Duration of permit.

A family entertainment centre gaming machine permit ('a permit')¹ ceases to have effect at the end of the period of ten years beginning with the date specified as the date on which it takes effect² unless it either ceases to have effect before that time in accordance with a relevant statutory provision³ or it is renewed⁴.

A permit lapses if the holder⁵ ceases to occupy the specified premises⁶; and it does not take effect if on the specified date⁷ the person to whom the permit is issued is not an occupier of the specified premises⁸. A permit also lapses if the licensing authority⁹ notifies¹⁰ the holder that the premises are not being used as a family entertainment centre¹¹.

A permit held by an individual lapses if:

- 1889 (1) he dies;
- 1890 (2) he becomes, in the opinion of the licensing authority as notified to him, incapable of carrying on the activities authorised by the permit by reason of mental or physical incapacity;
- 1891 (3) he becomes bankrupt¹² or, in Scotland, sequestration of his estate¹³ is awarded¹⁴.

In any other case a permit lapses if the holder ceases to exist or goes into liquidation¹⁵. During the period of six months beginning with the date on which a permit lapses under heads (1) to (3) above, or by reason of the holder ceasing to exist or going into liquidation, the following may, however, rely on it as if it had effect and were issued to them:

- 1892 (a) the personal representatives of the holder, in the case of an individual holder who dies;
- 1893 (b) the trustee of the bankrupt's estate, in the case of an individual holder who becomes bankrupt; and
- 1894 (c) the liquidator of the company, in the case of a company holder that goes into liquidation¹⁶.

A permit ceases to have effect if the holder gives notice of surrender to the licensing authority and either gives the authority the permit, or gives it a statement explaining why it is not reasonably practicable to produce the permit¹⁷.

Where the holder of a permit is convicted of a relevant offence¹⁸, the court by or before which he is convicted may order forfeiture of the permit¹⁹. Such forfeiture is to be on such terms, which may include terms as to suspension, as may be specified by:

- 1895 (i) the court which orders forfeiture; or
- 1896 (ii) a court to which an appeal against the conviction, or against any order made on the conviction, has been or could be made; or
- 1897 (iii) the High Court, if hearing proceedings relating to the conviction²⁰.

The terms on which forfeiture is so ordered must, in particular, include a requirement that the holder of the permit deliver to the licensing authority within such time as the order may specify either the permit, or a statement explaining why it is not reasonably practicable to produce the permit²¹. As soon as is reasonably practicable after making or suspending an order for forfeiture, a court must notify the licensing authority²². Subject to any express provision made by the court²³, a permit ceases to have effect on the making of a forfeiture order under these provisions²⁴.

1 As to the meaning of 'family entertainment centre gaming machine permit' see PARA 562.

2 Ie the date specified under the Gambling Act 2005 Sch 10 para 11(1)(c): see PARA 562.

3 Ie a provision of the Gambling Act 2005 Sch 10: see the text and notes 4-24.

4 Gambling Act 2005 Sch 10 para 12. As to renewal see Sch 10 para 18; and PARA 567.

5 'Holder', in relation to a permit, means the person to whom the permit is issued: Gambling Act 2005 Sch 10 para 1.

6 Gambling Act 2005 Sch 10 para 13(1). The reference in the text to the specified premises is to the premises specified under Sch 10 para 11(1)(b): see PARA 562. As to the meaning of 'the premises' see PARA 562 note 11; and as to the meaning of 'premises' see PARA 311 note 5. See also the Gambling Act 2005 Sch 10 para 24, cited in PARA 562.

7 See note 2.

8 Gambling Act 2005 Sch 10 para 13(2).

9 As to the meaning of 'the licensing authority' see PARA 563 note 9; as to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARA 563 note 7.

10 As to the method of notification see PARA 356 note 5.

11 Gambling Act 2005 Sch 10 para 14. As to the meaning of 'family entertainment centre' see PARA 349 note 15.

12 Ie within the meaning of the Insolvency Act 1986 s 381: see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 84.

13 Ie under the Bankruptcy (Scotland) Act 1985 s 12(1).

14 Gambling Act 2005 Sch 10 para 15(1).

15 Gambling Act 2005 Sch 10 para 15(2). The reference in the text to going into liquidation is a reference to going into liquidation within the meaning of the Insolvency Act 1986 s 247(2): see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 9.

16 Gambling Act 2005 Sch 10 para 15(3).

17 See the Gambling Act 2005 Sch 10 para 16.

18 As to the meaning of 'relevant offence' see PARA 353 note 11.

19 Gambling Act 2005 Sch 10 para 17(1).

20 Gambling Act 2005 Sch 10 para 17(2).

21 Gambling Act 2005 Sch 10 para 17(4).

22 Gambling Act 2005 Sch 10 para 17(5).

23 Ie under the Gambling Act 2005 Sch 10 para 17(2): see the text and note 20.

24 Gambling Act 2005 Sch 10 para 17(3).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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566. Maintenance of permit.

The holder¹ of a family entertainment centre gaming machine permit ('a permit')² must keep it on the premises³. An occupier of premises in respect of which such a permit has effect commits an offence if without reasonable excuse he fails to produce the permit on request for inspection by a constable⁴, an enforcement officer⁵ or an authorised local authority officer⁶.

If the person to whom a permit is issued changes his name or wishes to be known by another name, he may send the permit to the licensing authority⁷ with the prescribed fee⁸ and a request that a new name be substituted for the old name⁹. The licensing authority must comply with the request and return the permit to the holder¹⁰.

Where a permit is lost, stolen or damaged, the holder may apply to the licensing authority for a copy¹¹. Such an application must be accompanied by the prescribed fee¹². A licensing authority must consider such an application and must grant it if satisfied that the permit has been lost, stolen or damaged, and that where the permit has been lost or stolen, the loss or theft has been reported to the police¹³. As soon as is reasonably practicable after granting such an application a licensing authority must issue a copy of the permit certified by the authority as a true copy¹⁴. A copy of a permit issued under these provisions is to be treated as if it were the permit¹⁵.

1 As to the meaning of 'holder' see PARA 565 note 5.

2 As to the meaning of 'family entertainment centre gaming machine permit' see PARA 562.

3 Gambling Act 2005 Sch 10 para 19. As to the meaning of 'the premises' see PARA 562 note 11; and as to the meaning of 'premises' see PARA 311 note 5. See also the Gambling Act 2005 Sch 10 para 24, cited in PARA 562.

4 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

5 As to the meaning of 'enforcement officer' see PARA 342 note 7.

6 Gambling Act 2005 Sch 10 para 20(1). As to the meaning of 'authorised local authority officer' see PARA 517 note 6. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: Sch 10 para 20(2). As to the standard scale see PARA 17 note 21. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684. A licensing authority may institute criminal proceedings in respect of such an offence: see s 346(1)(m); and PARA 345.

7 As to the meaning of 'the licensing authority' see PARA 563 note 9; as to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARA 563 note 7.

8 As to the meaning of 'prescribed' see PARA 562 note 10. The fee to be sent with a request that a new name be substituted for the old name specified on a permit is £25: Gambling Act 2005 (Family Entertainment Centre Gaming Machine) (Permits) Regulations 2007, SI 2007/454, reg 5.

9 Gambling Act 2005 Sch 10 para 11(2)(a).

10 Gambling Act 2005 Sch 10 para 11(2)(b).

11 Gambling Act 2005 Sch 10 para 21(1).

12 Gambling Act 2005 Sch 10 para 21(2). The fee to accompany an application for a copy of a permit is £15: Gambling Act 2005 (Family Entertainment Centre Gaming Machine) (Permits) Regulations 2007, SI 2007/454, reg 6.

13 Gambling Act 2005 Sch 10 para 21(3).

14 Gambling Act 2005 Sch 10 para 21(4).

15 Gambling Act 2005 Sch 10 para 21(5).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(7) GAMING MACHINES/(iv) Family Entertainment Centre Gaming Machine Permits/567. Renewal of permit.

567. Renewal of permit.

The holder¹ of a family entertainment centre gaming machine permit ('a permit')² may apply to the licensing authority³ for renewal of the permit⁴. An application for renewal may not be made before the period of six months ending with the date on which the permit would otherwise expire⁵, or after the beginning of the period of two months ending with that date⁶. The application must be accompanied by the prescribed fee⁷.

The relevant statutory provisions⁸ have effect, with any necessary modifications, in relation to an application for renewal as they have effect in relation to an application for a permit⁹.

A licensing authority may refuse an application for renewal of a permit only on the grounds:

- 1898 (1) that an authorised local authority officer¹⁰ has been refused access to the premises without reasonable excuse; or
- 1899 (2) that renewal would not be reasonably consistent with pursuit of the licensing objectives¹¹.

A permit does not cease to have effect by virtue only of the expiry of the period of ten years from the specified date¹² while an application for renewal of the permit is pending, or while an appeal¹³ against a decision on an application for renewal of the permit is pending¹⁴.

A renewed permit ceases to have effect at the end of the period of ten years beginning with the date of renewal¹⁵, unless it ceases to have effect before that time or it is once more renewed¹⁶.

1 As to the meaning of 'holder' see PARA 565 note 5.

2 As to the meaning of 'family entertainment centre gaming machine permit' see PARA 562.

3 As to the meaning of 'the licensing authority' see PARA 563 note 9; as to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARA 563 note 7.

4 Gambling Act 2005 Sch 10 para 18(1).

5 Ie in accordance with the Gambling Act 2005 Sch 10 para 12: see PARA 565.

6 Gambling Act 2005 Sch 10 para 18(2).

7 See the Gambling Act 2005 Sch 10 para 5(d), applied by Sch 10 para 18(3).

The fee to accompany an application for renewal of a permit is £300: Gambling Act 2005 (Family Entertainment Centre Gaming Machine) (Permits) Regulations 2007, SI 2007/454, reg 3(c).

8 Ie the Gambling Act 2005 Sch 10 (paras 1-24): see PARAS 562 et seq, 568-569.

9 Gambling Act 2005 Sch 10 para 18(3). As to making the application see PARA 563.

10 As to the meaning of 'authorised local authority officer' see PARA 517 note 6.

11 Gambling Act 2005 Sch 10 para 18(4). As to the licensing objectives see PARA 331.

12 Ie by virtue of the Gambling Act 2005 Sch 10 para 12: see PARA 565.

13 As to appeals see PARA 568.

14 Gambling Act 2005 Sch 10 para 18(6).

15 The Gambling Act 2005 Sch 10 para 12 (see PARA 565) has effect in relation to a renewed permit as if the date of renewal were the date specified under Sch 10 para 11(1)(c) (see PARA 562): Sch 10 para 18(5).

16 See the Gambling Act 2005 Sch 10 para 12, applied with modifications by Sch 10 para 18(5).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(7) GAMING MACHINES/(iv) Family Entertainment Centre Gaming Machine Permits/568. Appeals in relation to permits.

568. Appeals in relation to permits.

The applicant for, or holder¹ of, a family entertainment centre gaming machine permit ('a permit')² may appeal if the licensing authority³:

- 1900 (1) rejects an application for the issue or renewal of a permit;
- 1901 (2) gives a notice that the premises⁴ are not being used as a family entertainment centre⁵; or
- 1902 (3) gives a notice⁶ that the holder, if an individual, has become incapable of carrying on the activities authorised by the permit by reason of mental or physical incapacity⁷.

Such an appeal must be instituted:

- 1903 (a) in the magistrates' court for a local justice area in which the premises to which the appeal relates are wholly or partly situated;
- 1904 (b) by notice of appeal given to the designated officer; and
- 1905 (c) within the period of 21 days beginning with the day on which the appellant or holder receives notice of the decision against which the appeal is brought⁸.

On such an appeal the magistrates' court may:

- 1906 (i) dismiss the appeal;
- 1907 (ii) substitute for the decision appealed against any decision that the licensing authority could have made, with effect from such date and on such transitional or other terms as the court may specify;
- 1908 (iii) restore a permit, with effect from such date and on such transitional or other terms as the court may specify;
- 1909 (iv) remit the case to the licensing authority to decide in accordance with a direction of the court⁹;
- 1910 (v) make an order about costs¹⁰.

1 As to the meaning of 'holder' see PARA 565 note 5.

2 As to the meaning of 'family entertainment centre gaming machine permit' see PARA 562.

3 As to the meaning of 'the licensing authority' see PARA 563 note 9; as to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARA 563 note 7.

4 As to the meaning of 'the premises' see PARA 562 note 11; and as to the meaning of 'premises' see PARA 311 note 5. See also the Gambling Act 2005 Sch 10 para 24, cited in PARA 562.

5 Ie a notice under the Gambling Act 2005 Sch 10 para 14: see PARA 565. As to the meaning of 'family entertainment centre' see PARA 349 note 15.

6 Ie a notice under the Gambling Act 2005 Sch 10 para 15(1)(b): see PARA 565.

7 See the Gambling Act 2005 Sch 10 para 22(1).

8 Gambling Act 2005 Sch 10 para 22(2).

9 The Gambling Act 2005 Sch 10 para 22(1) (rights of appeal: see heads (1)-(3) in the text) applies to a decision of a licensing authority following remittal under Sch 10 para 21(3)(d) (see head (iv) in the text): Sch 10 para 22(4).

10 Gambling Act 2005 Sch 10 para 22(3).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(7) GAMING MACHINES/(iv) Family Entertainment Centre Gaming Machine Permits/569. Register of permits.

569. Register of permits.

A licensing authority¹ must:

- 1911 (1) maintain a register of family entertainment centre gaming machine permits ('permits')² issued by the authority together with such other information as may be prescribed³;
- 1912 (2) make the register and information available for inspection by members of the public at all reasonable times; and
- 1913 (3) make arrangements for the provision of a copy of an entry in the register, or of information, to a member of the public on request⁴.

A licensing authority may, however, refuse to provide a copy of an entry or of information unless the person seeking it pays a reasonable fee specified by the authority⁵.

The Secretary of State⁶ may make regulations about the form of the register and the manner in which it is maintained⁷. He may also make regulations:

- 1914 (a) requiring licensing authorities to give to the Gambling Commission⁸ specified information about permits issued by them;
- 1915 (b) requiring the Commission to maintain a register of the information provided to it under head (a) above;
- 1916 (c) requiring the Commission to grant access to the register to members of the public, without charge;
- 1917 (d) requiring the Commission to make copies of entries available on request, and on payment of a reasonable fee, to members of the public;
- 1918 (e) excusing licensing authorities, wholly or partly, from compliance with heads (1) to (3) above⁹.

1 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARA 563 note 7.

2 As to the meaning of 'family entertainment centre gaming machine permit' see PARA 562.

3 As to the meaning of 'prescribed' see PARA 562 note 10.

4 Gambling Act 2005 Sch 10 para 23(1).

5 Gambling Act 2005 Sch 10 para 23(2).

6 As to the Secretary of State see PARA 2.

7 Gambling Act 2005 Sch 10 para 23(3). At the date at which this volume states the law, no such regulations had been made.

8 As to the Gambling Commission see PARA 4.

9 Gambling Act 2005 Sch 10 para 23(4). At the date at which this volume states the law, no such regulations had been made.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(7) GAMING MACHINES/(v) Licensed Premises Gaming Machine Permits/570. Nature and form of permit.

(v) Licensed Premises Gaming Machine Permits

570. Nature and form of permit.

A licensed premises gaming machine¹ permit ('a permit') is a permit issued by a licensing authority² authorising a person to make gaming machines of Category C³ or Category D⁴, or both, available for use on premises to which these provisions apply⁵, namely premises other than a vehicle⁶:

- 1919 (1) in respect of which an on-premises alcohol licence⁷ has effect;
- 1920 (2) which contain a bar at which alcohol is served for consumption on the premises, without a requirement that alcohol is served only with food; and
- 1921 (3) at a time when alcohol may be supplied in reliance on the alcohol licence⁸.

A licensed premises gaming machine permit must, by virtue of this provision, be subject to the condition that the holder comply with any relevant provision of a code of practice⁹ about the location and operation of a gaming machine¹⁰.

A permit must be in the prescribed form¹¹ and must specify:

- 1922 (a) the person to whom it is issued;
- 1923 (b) the premises;
- 1924 (c) the number and category of gaming machines which it authorises; and
- 1925 (d) the date on which it takes effect¹².

Such permits allow Category C or Category D gaming machines, or both, to be made available for use without an operating licence¹³ or a premises licence¹⁴ in circumstances which would otherwise constitute an offence¹⁵.

1 As to the meaning of 'gaming machine' see PARA 547.

2 For these purposes, a reference to a licensing authority includes a reference to the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple: Gambling Act 2005 s 278(2). As to the licensing authorities see PARA 3.

3 As to the meaning of 'Category C gaming machine' see PARA 551.

4 As to the meaning of 'Category D gaming machine' see PARA 552.

5 Gambling Act 2005 s 283(2).

6 As to the meaning of 'vehicle' see PARA 311 note 5.

7 In the Gambling Act 2005, 'alcohol licence' means a premises licence under the Licensing Act 2003 Pt 3 (ss 11-59) (see PARA 53 et seq); and 'on-premises alcohol licence' means a premises licence under that Part which authorises the supply of alcohol for consumption on the licensed premises: Gambling Act 2005 s 277(a), (b).

8 Gambling Act 2005 s 278(1).

9 le a code of practice under the Gambling Act 2005 s 24: see PARA 337. The Gambling Commission issued a relevant code of practice in June 2007: see *Gaming Machine Permits Code of Practice--Club Gaming Permits and Club Machine Permits--Alcohol Licensed Premises Permits and Permissions* (June 2007, Gambling Commission) set out in Paterson's Licensing Acts (116th Edn, 2008) at para 3.2675. That code of practice is also published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk.

10 Gambling Act 2005 s 283(3).

11 'Prescribed' means prescribed by regulations made by the Secretary of State: Gambling Act 2005 Sch 13 para 23. For the prescribed form see the Gambling Act 2005 (Licensed Premises Gaming Machine Permits) (England and Wales) Regulations 2007, SI 2007/1833, reg 4, Schedule.

12 Gambling Act 2005 Sch 13 para 7(1).

13 As to the meaning of 'operating licence' see PARA 349 note 2.

14 As to the meaning of 'premises licence' see PARA 460 note 1.

15 See the Gambling Act 2005 s 283(1). As to the offences which would otherwise be committed see s 37; and PARA 616; s 242; and PARA 638. Section 283(1) does not, however, disapply s 37 or s 242 in respect of premises at a time when gaming machines are made available for use on those premises in reliance on a club gaming permit or a club machine permit: s 283(4). As to club gaming permits and club machine permits see PARA 578 et seq.

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(7) GAMING MACHINES/(v) Licensed Premises Gaming Machine Permits/571. Application for permit.

571. Application for permit.

A person who applies to a licensing authority¹ in its capacity as a licensing authority under the Licensing Act 2003² for an on-premises alcohol licence³ or who holds an on-premises alcohol licence issued by a licensing authority in that capacity may apply to that licensing authority in its capacity as a licensing authority under the Gambling Act 2005⁴ for a licensed premises gaming machine permit ('a permit')⁵. Such an application may not be made if a premises licence under Part 8 of the 2005 Act⁶ has effect in relation to the premises⁷.

An application for a permit must:

- 1926 (1) be made in such form and manner as the licensing authority may direct;
- 1927 (2) specify the premises in respect of which the permit is sought;
- 1928 (3) specify the number and category of gaming machines⁸ in respect of which the permit is sought;
- 1929 (4) contain or be accompanied by such other information or documents as the licensing authority may direct; and
- 1930 (5) be accompanied by the prescribed fee⁹.

1 As to the licensing authorities see PARA 3.

2 As to the functions of licensing authorities under the Licensing Act 2003 see PARAS 35-39; and as to licensing committees see PARAS 40-42. Licensing authorities must have regard to any guidance issued by the Secretary of State under the Licensing Act 2003 s 182: see s 4; and PARA 35. As to the Secretary of State, and his duty to issue guidance under s 182, see PARA 2.

3 As to the meaning of 'on-premises alcohol licence' see PARA 570 note 7.

4 The Gambling Act 2005 s 154 (delegation of functions to licensing committees and sub-committees: see PARAS 466-136) has effect in relation to the functions of a licensing authority under Sch 13 as it has effect in relation to the functions of a licensing authority under Pt 8 (ss 150-213, Sch 9) (see PARA 460 et seq): Sch 13 para 3.

5 Gambling Act 2005 Sch 13 para 1(1). As to the meaning of 'licensed premises gaming machine permit' see PARA 570.

6 Ie under the Gambling Act 2005 Pt 8 (ss 150-213, Sch 9): see PARA 460 et seq. As to the meaning of 'premises licence' see PARA 460 note 1.

7 Gambling Act 2005 Sch 13 para 1(2). As to the meaning of 'premises' see PARA 311 note 5; and as to the premises to which these provisions apply see PARA 570.

8 As to the meaning of 'gaming machine' see PARA 547; as to categories of gaming machine see PARAS 548-552; and as to the categories of gaming machine in respect of which a permit may be issued see PARA 570.

9 Gambling Act 2005 Sch 13 para 2. As to the meaning of 'prescribed' see PARA 570 note 11. The fee to accompany an application for a permit is £150, or £100 where the application is made by an existing operator: Gambling Act 2005 (Licensed Premises Gaming Machine Permits) (England and Wales) Regulations 2007, SI 2007/1833, reg 3(a). 'Existing operator' means a person who makes an application for a permit and (1) on the date on which he makes the application, holds a permit issued under the Gaming 1968 s 34 (repealed) by the authority mentioned in Sch 9 para 1(a) (repealed) (a 'section 34 permit'); (2) that section 34 permit (a) authorises him to make available a number of gaming machines, being a number which is greater than two; and (b) is due to expire in accordance with the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 24(1) or (2) on a date on or after 1 September 2007; (3) the

application for the permit is made before the date on which the section 34 permit is due to expire in accordance with Sch 4 para 24(1) or (2); and (4) the application relates to the same or substantially the same premises as those to which the section 34 permit relates: Gambling Act 2005 (Licensed Premises Gaming Machine Permits) (England and Wales) Regulations 2007, SI 2007/1833, reg 2(1).

A permit under the Gaming Act 1968 s 34 (repealed), referred to as an alcohol licensed premises gaming machine permit, granted by the authority mentioned in Sch 9 para 1(a) or (c) (repealed) which (i) was in force immediately before 1 September 2007, or (ii) if not so in force, was granted or renewed on or after that date, has effect on and after 1 September 2007: Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 23(1)-(3). Where an alcohol licensed premises gaming machine permit has effect in accordance with Sch 4 para 23(3), its effect is to authorise the holder to make available on the premises to which the permit relates a number of Category C or D gaming machines equal to the number of AWP machines which the permit would have authorised him to make available under the 1968 Act: Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 23(4). An alcohol licensed premises gaming machine permit is to be subject to the conditions that any gaming machine must (A) be located on premises which contain a bar at which alcohol is served for consumption on the premises (without a requirement that alcohol is served only with food); and (B) be made available for use only at a time when alcohol may be supplied in reliance on the premises licence under the Licensing Act 2003 Pt 3 (ss 11-59) (see PARA 53 et seq): Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 23(5). 'AWP machine' means a machine to which the Gaming Act 1968 Pt 3 (repealed) applied, which is used for gaming (within the meaning of that Act), and which complies with the conditions specified in s 34(2), (3) and (5) (repealed) or those specified in s 34(5B)-(5C) (repealed): Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 23(6).

Subject to Sch 4 paras 25(8), 28(5), 29(4), (5) and to the following provisions, an alcohol licensed premises gaming machine permit is to have effect until: (aa) in a case falling within head (i) above, whichever is the earlier of 31 August 2010, or the date on which the permit, as it had effect immediately before 1 September 2007, was due to expire in accordance with the Gaming Act 1968 Sch 9 para 18 (repealed); or (bb) in a case falling within head (ii) above, for a period of three years beginning on the date on which the permit is granted or renewed: Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 24(1). Where in a case falling within head (i) above the permit had effect immediately before 1 September 2007 by virtue of the Gaming Act 1968 Sch 9 para 19 (repealed), and the application under Sch 9 (repealed) for the renewal of the permit was granted on or after that date, the permit is to have effect until 31 August 2010: Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 24(2).

Where the holder of a permit under the Gaming Act s 34 (repealed) granted by the authority mentioned in Sch 9 para 1(a) or (c) (repealed) applies for a licensed premises gaming machine permit before the date on which the permit under s 34 (repealed) is due to expire, the permit is not to cease to have effect by virtue of the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 24(1) or (2) until the application for the licensed premises gaming machine permit is determined or is withdrawn: Sch 4 para 24(3) (amended by SI 2007/1157). An alcohol licensed premises gaming machine permit is to cease to have effect before the date referred to in the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 24(1) if before that date the holder of the permit is granted a licensed premises gaming machine permit, or the Gambling Act 2005 s 282 (which enables up to two Category C or D gaming machines to be made available in alcohol licensed premises: see PARA 669) applies to the premises specified in the permit: Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 24(4). Where Sch 4 para 24(4) applies, the permit is to cease to have effect immediately before the licensed premises gaming machine permit or the Gambling Act 2005 s 282 has effect in relation to the premises specified in the permit: Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 24(5).

As to the application, with modifications, of the Gambling Act 2005 to alcohol licensed premises gaming machine permits see the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 25; and as to conversion applications see Sch 4 paras 27, 30 (Sch 4 para 27 amended by SI 2007/1157).

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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572. Consideration and determination of application.

A licensing authority¹ to which an application is made for a licensed premises gaming machine permit ('a permit')² must consider it having regard to the licensing objectives³, to any relevant guidance issued⁴ by the Gambling Commission⁵ and to such other matters as the authority thinks relevant⁶. On considering an application for a permit a licensing authority must:

- 1931 (1) grant the application;
- 1932 (2) refuse the application; or
- 1933 (3) grant it in respect of a smaller number of gaming machines⁷ than that specified in the application, a different category of machines⁸ from that specified in the application, or both⁹.

A licensing authority may not attach conditions to a permit¹⁰.

A licensing authority may grant an application for a permit only if the applicant holds an on-premises alcohol licence¹¹. As soon as is reasonably practicable after granting an application, a licensing authority must issue a permit to the applicant¹².

A licensing authority may not refuse an application, or grant an application in respect of a different category or smaller number of gaming machines than that specified in the application, unless the authority has:

- 1934 (a) notified¹³ the applicant of its intention to refuse the application, or grant the application in respect of a smaller number of machines than that specified in the application, a different category of machines from that specified in the application, or both; and
- 1935 (b) given the applicant an opportunity to make oral or written representations, or both oral and written representations¹⁴.

Head (b) above does not, however, apply in respect of a refusal if the refusal was¹⁵ because the applicant did not hold an on-premises alcohol licence¹⁶. As soon as is reasonably practicable after refusing an application a licensing authority must notify the applicant of the refusal and the reasons for it¹⁷.

1 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARA 571 note 4.

2 I.e. an application under the Gambling Act 2005 Sch 13: see PARA 571; the text and notes 3-17; and PARA 573 et seq. As to the meaning of 'licensed premises gaming machine permit' see PARA 570.

3 As to the licensing objectives see PARA 331.

4 I.e. under the Gambling Act 2005 s 25: see PARA 338.

5 As to the Gambling Commission see PARA 4.

6 Gambling Act 2005 Sch 13 para 4(1).

- 7 As to the meaning of 'gaming machine' see PARA 547.
- 8 As to categories of gaming machine see PARAS 548-552; and as to the categories of gaming machine in respect of which a permit may be issued see PARA 570.
- 9 Gambling Act 2005 Sch 13 para 4(2).
- 10 Gambling Act 2005 Sch 13 para 5(1).
- 11 Gambling Act 2005 Sch 13 para 6(1). As to the meaning of 'on-premises alcohol licence' see PARA 570 note 7.
- 12 Gambling Act 2005 Sch 13 para 5(2).
- 13 As to the method of notification see PARA 356 note 5.
- 14 See the Gambling Act 2005 Sch 13 paras 6(2), (3).
- 15 Ie if the refusal was by virtue of the Gambling Act 2005 Sch 13 para 6(1): see the text and note 11.
- 16 See the Gambling Act 2005 Sch 13 para 6(4).
- 17 Gambling Act 2005 Sch 13 para 5(3).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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573. Duration of permit.

A licensed premises gaming machine permit ('a permit')¹ continues to have effect unless and until it ceases to have effect in accordance with a relevant² statutory provision³.

A permit ceases to have effect if an on-premises alcohol licence⁴ ceases to have effect with respect to the premises⁵ to which it relates, or the permit holder ceases to be the holder of an on-premises alcohol licence⁶. A permit also ceases to have effect if the permit holder gives notice of surrender to the licensing authority⁷, and gives the authority either the permit, or a statement explaining why it is not reasonably practicable to produce the permit⁸.

The licensing authority which issued a permit may cancel it, or may vary the number or category, or both, of gaming machines⁹ authorised by it, if the authority thinks that:

- 1936 (1) it would not be reasonably consistent with pursuit of the licensing objectives¹⁰ for the permit to continue to have effect;
- 1937 (2) gaming¹¹ has taken place on the premises in purported reliance on the permit but otherwise than in accordance with the permit or a condition of the permit;
- 1938 (3) the premises are mainly used or to be used for making gaming machines available; or
- 1939 (4) an offence under the Gambling Act 2005 has been committed on the premises¹².

Before so cancelling or varying a permit a licensing authority must:

- 1940 (a) give the permit holder at least 21 days' notice¹³ of the authority's intention to consider cancelling or varying the permit;
- 1941 (b) consider any representations made by the holder;
- 1942 (c) hold a hearing if the holder requests one; and
- 1943 (d) comply with any prescribed requirements¹⁴ for the procedure to be followed in considering whether to cancel or vary a permit¹⁵.

If a licensing authority cancels or varies a permit under these provisions it must as soon as is reasonably practicable give notice of the cancellation or variation and the reasons for it to the permit holder and to the Gambling Commission¹⁶. The cancellation or variation of a permit does not take effect until the period for instituting an appeal¹⁷ has expired without an appeal being brought, or any appeal brought has been determined¹⁸.

The licensing authority which issued a permit must cancel it if the holder fails to pay¹⁹ the annual fee²⁰; but a licensing authority may disapply this provision if it thinks that a failure to pay is attributable to administrative error²¹.

Where a permit holder, or the officer of a permit holder, is convicted of a relevant offence²² the court by or before which he is convicted may order forfeiture of the permit²³. Such forfeiture must be on such terms, which may include terms as to suspension, as may be specified by:

- 1944 (i) the court which orders forfeiture;

- 1945 (ii) a court to which an appeal against the conviction, or against any order made on the conviction, has been or could be made; or
 1946 (iii) the High Court, if hearing proceedings relating to the conviction²⁴.

The terms on which forfeiture is so ordered must, in particular, include a requirement that the permit holder deliver to the licensing authority, within such time as the order may specify, either the permit or a statement explaining why it is not reasonably practicable to produce the permit²⁵. As soon as is reasonably practicable after making or suspending an order for forfeiture under these provisions a court must notify the licensing authority²⁶. Subject to any express provision made by the court²⁷, a permit ceases to have effect on the making of such a forfeiture order²⁸.

- 1 As to the meaning of 'licensed premises gaming machine permit' see PARA 570.
- 2 le in accordance with a provision of the Gambling Act 2005 Sch 13: see PARAS 571-572; the text and notes 3-28; and PARA 574 et seq.
- 3 Gambling Act 2005 Sch 13 para 12.
- 4 As to the meaning of 'on-premises alcohol licence' see PARA 570 note 7.
- 5 As to the meaning of 'premises' see PARA 311 note 5; and as to the premises to which these provisions apply see PARA 570.
- 6 Gambling Act 2005 Sch 13 para 13.
- 7 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARA 571 note 4.
- 8 Gambling Act 2005 Sch 13 para 14.
- 9 As to the meaning of 'gaming machine' see PARA 547; as to categories of gaming machine see PARAS 548-552; and as to the categories of gaming machine in respect of which a permit may be issued see PARA 570.
- 10 As to the licensing objectives see PARA 331.
- 11 As to the meaning of 'gaming' see PARA 310.
- 12 Gambling Act 2005 Sch 13 para 16(1). As to offences under the Gambling Act 2005 see PARA 615 et seq.
- 13 As to the method of giving notice see PARA 356 note 5.
- 14 As to the meaning of 'prescribed' see PARA 570 note 11. At the date at which this volume states the law, no regulations had been made prescribing the procedure to be followed in such cases.
- 15 Gambling Act 2005 Sch 13 para 16(2).
- 16 Gambling Act 2005 Sch 13 para 16(3). As to the Gambling Commission see PARA 4.
- 17 le the period specified in the Gambling Act 2005 Sch 13 para 21(2)(c): see PARA 576.
- 18 Gambling Act 2005 Sch 13 para 16(4). As to appeals see PARA 576.
- 19 le fails to pay in accordance with the Gambling Act 2005 Sch 13 para 9: see PARA 574.
- 20 Gambling Act 2005 Sch 13 para 17(1).
- 21 Gambling Act 2005 Sch 13 para 17(2).
- 22 As to the meaning of 'relevant offence' see PARA 353 note 11.
- 23 Gambling Act 2005 Sch 13 para 18(1).
- 24 Gambling Act 2005 Sch 13 para 18(2).

- 25 Gambling Act 2005 Sch 13 para 18(4).
- 26 Gambling Act 2005 Sch 13 para 18(5).
- 27 Ie under the Gambling Act 2005 Sch 13 para 18(2): see heads (i)-(iii) in the text.
- 28 Gambling Act 2005 Sch 13 para 18(3).

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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574. Maintenance of permit.

The holder of a licensed premises gaming machine permit ('a permit')¹ must keep it on the premises² to which it relates³. He must:

- 1947 (1) pay a first annual fee⁴ to the issuing licensing authority⁵ within such period after the issue of the permit as may be prescribed⁶; and
- 1948 (2) pay an annual fee⁷ to the issuing licensing authority before each anniversary of the issue of the permit⁸.

An occupier of premises in respect of which a permit has effect commits an offence if without reasonable excuse he fails to produce the permit on request for inspection by a constable⁹, an enforcement officer¹⁰ or an authorised local authority officer¹¹.

If the person to whom a permit is issued changes his name or wishes to be known by another name, he may send the permit to the licensing authority with the prescribed fee¹² and a request that a new name be substituted for the old name¹³. The licensing authority must comply with the request and return the permit to the holder¹⁴.

Where a permit is lost, stolen or damaged, the holder may apply to the licensing authority for a copy¹⁵. Such an application must be accompanied by the prescribed fee¹⁶. A licensing authority must consider such an application and must grant it if the authority is satisfied that the permit has been lost, stolen or damaged, and that where the permit has been lost or stolen, the loss or theft has been reported to the police¹⁷. As soon as is reasonably practicable after granting such an application, a licensing authority must issue a copy of the permit certified by the authority as a true copy¹⁸. A copy of a permit so issued is to be treated as if it were the permit¹⁹.

1 As to the meaning of 'licensed premises gaming machine permit' see PARA 570.

2 As to the meaning of 'premises' see PARA 311 note 5; and as to the premises to which these provisions apply see PARA 570.

3 Gambling Act 2005 Sch 13 para 8.

4 For these purposes, 'annual fee' means a fee of such amount as may be prescribed: Gambling Act 2005 Sch 13 para 9(2). As to the meaning of 'prescribed' see PARA 570 note 11. The first annual fee for a permit payable to the issuing licensing authority under Sch 13 para 9(1)(a) (see head (1) in the text) is £50: Gambling Act 2005 (Licensed Premises Gaming Machine Permits) (England and Wales) Regulations 2007, SI 2007/1833, reg 5.

5 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARA 571 note 4.

6 Where a permit comes into effect on the issue date, the first annual fee for the permit must be paid within 30 days after that date: Gambling Act 2005 (Licensed Premises Gaming Machine Permits) (England and Wales) Regulations 2007, SI 2007/1833, reg 7(1). Where a permit specifies that it is to come into effect on a date after the issue date, the first annual fee for the permit must be paid within (1) the relevant period; or (2) 12 months, after the issue date, whichever is sooner (reg 7(2)); but this does not apply to a permit issued before 1 September 2007 (reg 7(3)). For these purposes, 'the effective date', in relation to a permit which specifies that it is to come into effect on a date after the issue date, means the date so specified; 'the issue date' means the date on which a permit is issued; and 'the relevant period', in relation to a permit, means the period which is equal to the sum of (a) the period between the issue date and the effective date; and (b) 30 days: reg 7(4).

- 7 The annual fee for a permit payable to the issuing licensing authority under the Gambling Act 2005 Sch 13 para 9(1)(b) (see head (2) in the text) is £50: Gambling Act 2005 (Licensed Premises Gaming Machine Permits) (England and Wales) Regulations 2007, SI 2007/1833, reg 6.
- 8 Gambling Act 2005 Sch 13 para 9(1).
- 9 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.
- 10 As to the meaning of 'enforcement officer' see PARA 342 note 7.
- 11 Gambling Act 2005 Sch 13 para 10(1). As to the meaning of 'authorised local authority officer' see PARA 517 note 6. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: Sch 13 para 10(2). As to the standard scale see PARA 17 note 21. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684. A licensing authority may institute criminal proceedings in respect of such an offence: see s 346(1)(n); and PARA 345.
- 12 The prescribed fee is £25: see the Gambling Act 2005 (Licensed Premises Gaming Machine Permits) (England and Wales) Regulations 2007, SI 2007/1833, reg 8.
- 13 Gambling Act 2005 Sch 13 para 7(2)(a).
- 14 Gambling Act 2005 Sch 13 para 7(2)(b).
- 15 Gambling Act 2005 Sch 13 para 11(1).
- 16 Gambling Act 2005 Sch 13 para 11(2). The prescribed fee is £15: see the Gambling Act 2005 (Licensed Premises Gaming Machine Permits) (England and Wales) Regulations 2007, SI 2007/1833, reg 9.
- 17 Gambling Act 2005 Sch 13 para 11(3).
- 18 Gambling Act 2005 Sch 13 para 11(4).
- 19 Gambling Act 2005 Sch 13 para 11(5).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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575. Variation and transfer of permits.

The holder of a licensed premises gaming machine permit ('a permit')¹ may apply to the licensing authority² to vary the number or category, or both, of gaming machines³ authorised by the permit⁴. The application must be accompanied by the prescribed fee⁵. As already discussed, a permit may also be varied by the licensing authority on its own initiative if the authority thinks that the statutory grounds for doing so apply⁶.

A person may apply for the transfer of a permit to him if he is applying for the transfer⁷ of an on-premises alcohol licence⁸ to him and a permit has effect in respect of the same premises⁹. The application must be accompanied by the prescribed fee¹⁰. A person applying for the transfer of a permit to him must also supply with his application either the permit, or a statement explaining why it is not reasonably practicable to produce the permit¹¹. A licensing authority may not approve such an application for the transfer of a permit unless the transfer of the on-premises alcohol licence is approved under the relevant provision¹² of the Licensing Act 2003¹³.

Where the transfer of an on-premises alcohol licence is to be given immediate effect under the Licensing Act 2003¹⁴ and the applicant has also made an application for transfer of a permit under the above provisions, a permit in respect of those premises has effect during the application period¹⁵ as if the applicant for the transfer were the permit holder¹⁶.

1 As to the meaning of 'licensed premises gaming machine permit' see PARA 570.

2 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARA 571 note 4.

3 As to the meaning of 'gaming machine' see PARA 547; as to categories of gaming machine see PARAS 548-552; and as to the categories of gaming machine in respect of which a permit may be issued see PARA 570.

4 Gambling Act 2005 Sch 13 para 15(1). Schedule 13 paras 1-7, 21 (see PARAS 571-572, 574, 576) have effect with any necessary modifications in relation to an application for variation under Sch 13 para 15 as they have effect in relation to an application for the issue of a permit: Sch 13 para 15(2).

5 Gambling Act 2005 Sch 13 para 2(e) (as applied: see note 4). As to the meaning of 'prescribed' see PARA 570 note 11. The fee to accompany an application to vary a permit under Sch 13 para 15(1) is £100: Gambling Act 2005 (Licensed Premises Gaming Machine Permits) (England and Wales) Regulations 2007, SI 2007/1833, reg 3(b).

6 See the Gambling Act 2005 Sch 13 para 16; and PARA 573.

7 In accordance with (1) the Licensing Act 2003 s 42 (application for transfer: see PARA 73); or (2) s 50 (transfer following death of holder: see PARA 75).

8 As to the meaning of 'on-premises alcohol licence' see PARA 570 note 7.

9 Gambling Act 2005 Sch 13 para 19(1). The provisions of Sch 13 have effect (with any necessary modifications) in relation to an application for the transfer of a permit as they have effect in relation to an application for the issue of a permit: Sch 13 para 19(2).

10 Gambling Act 2005 Sch 13 para 2(e) (as applied: see note 9).

The fee to accompany an application to transfer a permit under Sch 13 para 19(1) is £25: Gambling Act 2005 (Licensed Premises Gaming Machine Permits) (England and Wales) Regulations 2007, SI 2007/1833, reg 3(c).

- 11 Gambling Act 2005 Sch 13 para 19(3).
- 12 Ie under the Licensing Act 2003 s 45: see PARA 74.
- 13 Gambling Act 2005 Sch 13 para 19(4). Where a licensing authority refuses an application for the transfer of a permit under Sch 13 para 19 by virtue of Sch 13 para 19(4), the provisions of Sch 13 para 6(2)(b) (opportunity to make representations: see PARA 572) do not apply to the refusal: Gambling Act 2005 Sch 13 para 19(5).
- 14 Ie under the Licensing Act 2003 s 43: see PARA 73.
- 15 As to the meaning of 'application period' see PARA 73 note 17 (definition applied by the Gambling Act 2005 Sch 13 para 20(3)).
- 16 Gambling Act 2005 Sch 13 para 20(1), (2).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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576. Appeals.

The applicant for, or holder of, a licensed premises gaming machine permit ('a permit')¹ may appeal if the licensing authority²:

- 1949 (1) rejects an application for a permit;
- 1950 (2) grants an application for a permit in respect of a smaller number of gaming machines³ than that specified in the application or a different category of machines⁴ from that specified in the application, or both; or
- 1951 (3) gives a notice⁵ cancelling the permit or varying it on the authority's own initiative⁶.

Such an appeal must be instituted:

- 1952 (a) in the magistrates' court for a local justice area in which the premises⁷ to which the appeal relates are wholly or partly situated;
- 1953 (b) by notice of appeal given to the designated officer; and
- 1954 (c) within the period of 21 days beginning with the day on which the appellant or holder receives notice of the decision against which the appeal is brought⁸.

On an appeal the magistrates' court may:

- 1955 (i) dismiss the appeal;
- 1956 (ii) substitute for the decision appealed against any decision that the licensing authority could have made, with effect from such date and on such transitional or other terms as the court may specify;
- 1957 (iii) restore a permit, with effect from such date and on such transitional or other terms as the court may specify;
- 1958 (iv) remit the case to the licensing authority to decide in accordance with a direction of the court⁹;
- 1959 (v) make an order about costs¹⁰.

1 As to the meaning of 'licensed premises gaming machine permit' see PARA 570.

2 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARA 571 note 4.

3 As to the meaning of 'gaming machine' see PARA 547.

4 As to categories of gaming machine see PARAS 548-552; and as to the categories of gaming machine in respect of which a permit may be issued see PARA 570.

5 Ie under the Gambling Act 2005 Sch 13 para 16: see PARA 573.

6 See the Gambling Act 2005 Sch 13 para 21(1).

7 As to the meaning of 'premises' see PARA 311 note 5; and as to the premises to which these provisions apply see PARA 570.

8 Gambling Act 2005 Sch 13 para 21(2).

9 Schedule 13 para 21(1) (see the text and notes 1-6) applies to a decision of a licensing authority following remittal under Sch 13 para 21(3)(d) (see head (iv) in the text): Sch 13 para 21(4).

10 Gambling Act 2005 Sch 13 para 21(3).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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577. Register of permits.

A licensing authority¹ must:

- 1960 (1) maintain a register of licensed premises gaming machine permits ('permits')² issued by the authority together with such other information as may be prescribed³;
- 1961 (2) make the register and information available for inspection by members of the public at all reasonable times; and
- 1962 (3) make arrangements for the provision of a copy of an entry in the register, or of information, to a member of the public on request⁴.

A licensing authority may, however, refuse to provide a copy of an entry or of information unless the person seeking it pays a reasonable fee specified by the authority⁵.

The Secretary of State⁶ may make regulations about the form of the register and the manner in which it is maintained⁷. He may also make regulations:

- 1963 (a) requiring licensing authorities to give to the Gambling Commission⁸ specified information about permits issued by them;
- 1964 (b) requiring the Commission to maintain a register of the information provided to it under head (a) above;
- 1965 (c) requiring the Commission to grant access to the register to members of the public, without charge;
- 1966 (d) requiring the Commission to make copies of entries available on request, and on payment of a reasonable fee, to members of the public;
- 1967 (e) excusing licensing authorities, wholly or partly, from compliance with heads (1) to (3) above⁹.

1 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARA 571 note 4.

2 As to the meaning of 'licensed premises gaming machine permit' see PARA 570.

3 As to the meaning of 'prescribed' see PARA 570 note 11.

4 Gambling Act 2005 Sch 13 para 22(1).

5 Gambling Act 2005 Sch 13 para 22(2).

6 As to the Secretary of State see PARA 2.

7 Gambling Act 2005 Sch 13 para 22(3). At the date at which this volume states the law, no such regulations had been made.

8 As to the Gambling Commission see PARA 4.

9 Gambling Act 2005 Sch 13 para 22(4). At the date at which this volume states the law, no such regulations had been made.

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(8) CLUB GAMING PERMITS AND CLUB MACHINE PERMITS

(i) Definitions

A. CLUBS AND MINERS' WELFARE INSTITUTES

578. Meaning of 'members' club'.

In the Gambling Act 2005, 'members' club' means a club:

- 1968 (1) which is established and conducted wholly or mainly for purposes other than the provision of facilities for gaming¹;
- 1969 (2) which is established and conducted for the benefit of its members and which is not otherwise established or conducted as a commercial enterprise;
- 1970 (3) which is not established with the purpose of functioning only for a limited period of time; and
- 1971 (4) which has at least 25 individual members².

Despite head (1) above, a club is a members' club for the purposes of the 2005 Act if:

- 1972 (a) it is established or conducted wholly or mainly for the purpose of the provision of facilities for gaming of a prescribed kind³; and
- 1973 (b) facilities are not provided for any other kind of gaming in the course of the club's activities⁴.

1 As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gaming' see PARA 310.

2 Gambling Act 2005 s 266(1).

3 For these purposes, 'prescribed' means prescribed by regulations made by the Secretary of State: Gambling Act 2005 s 276. As to the Secretary of State see PARA 2. Bridge and whist are prescribed for these purposes: Gambling Act 2005 (Gaming in Clubs) Regulations 2007, SI 2007/1942, reg 2.

4 Gambling Act 2005 s 266(2).

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

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579. Meaning of 'commercial club'.

In the Gambling Act 2005, 'commercial club' means a club:

- 1974 (1) which is established and conducted wholly or mainly for purposes other than the provision of facilities for gaming¹;
- 1975 (2) which is not established with the purpose of functioning only for a limited period of time; and
- 1976 (3) which has at least 25 individual members².

Despite head (1) above, a club is a commercial club for the purposes of the 2005 Act if:

- 1977 (a) it is established or conducted wholly or mainly for the purpose of the provision of facilities for gaming of a prescribed kind³; and
- 1978 (b) facilities are not provided for any other kind of gaming in the course of the club's activities⁴.

¹ As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gaming' see PARA 310.

² Gambling Act 2005 s 267(1).

³ As to the meaning of 'prescribed' see PARA 578 note 3. Bridge and whist are prescribed for these purposes: Gambling Act 2005 (Gaming in Clubs) Regulations 2007, SI 2007/1942, reg 2.

⁴ Gambling Act 2005 s 267(2).

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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580. Meaning of 'miner's welfare institute'.

In the Gambling Act 2005, 'miners' welfare institute' means an association:

- 1979 (1) which is established and conducted for social and recreational purposes;
and
- 1980 (2) which satisfies either of the following conditions¹.

An association satisfies the first condition if its affairs are managed by a group of individuals of whom at least two thirds are miners' representatives².

An association satisfies the second condition if it operates on premises³ the use of which is regulated in accordance with a charitable trust and the trust has received money from the Miners' Welfare Fund⁴, the former body corporate which was known as the Coal Industry Social Welfare Organisation⁵ or the charitable trust known as the Coal Industry Social Welfare Organisation⁶.

1 Gambling Act 2005 s 268(1).

2 Gambling Act 2005 s 268(2). For these purposes, 'miners' representative' means a person who (1) is nominated or appointed by a person who employs or has employed individuals in the course of a coal mining business; (2) is nominated or appointed by the charitable trust known as the Coal Industry Social Welfare Organisation; (3) is nominated or appointed by an organisation representing persons who are or were employed in connection with coal mining; or (4) is or was employed in connection with coal mining; and the group mentioned in s 268(2) must contain both one or more persons of a kind specified in head (1) or head (2) above and one or more persons of a kind specified in head (3) or head (4) above: s 268(3).

3 As to the meaning of 'premises' see PARA 311 note 5.

4 I.e. the Miner's Welfare Fund established by the Mining Industry Act 1920 s 20 (repealed). As to that fund, its winding up and the transfer of its property, rights and liabilities see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 87.

5 I.e. the body of that name incorporated under the Companies Act 1948 (repealed). As to that body and the transfer of its property, rights and liabilities see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 87.

6 Gambling Act 2005 s 268(4). As to the charitable trust known as the Coal Industry Social Welfare Organisation see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 87.

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(8) CLUB GAMING PERMITS AND CLUB MACHINE PERMITS/(i) Definitions/B. PERMITS/581. Nature of club gaming permit.

B. PERMITS

581. Nature of club gaming permit.

A club gaming permit is a permit issued by a licensing authority¹ authorising the provision of facilities for gaming² on premises³ on which a members' club⁴ or a miners' welfare institute⁵ operates, and in the course of the activities of the club or institute⁶. A club gaming permit may not be issued in respect of a vehicle⁷ or vessel⁸, or part of a vehicle or vessel⁹.

A club gaming permit must, by virtue of these provisions, authorise¹⁰:

- 1981 (1) making up to three gaming machines¹¹ available for use, each of which must be of Category B¹², Category C¹³ or Category D¹⁴;
- 1982 (2) the provision of facilities for gaming which satisfies the conditions for exempt gaming¹⁵ except for the first such condition¹⁶; and
- 1983 (3) the provision of facilities for games of chance¹⁷, of such class or description as may be prescribed¹⁸, in accordance with the following conditions¹⁹, namely that:
 - 139 216. (a) no participation fee²⁰ is charged otherwise than in accordance with regulations, which may make provision about the circumstances in which a fee may be charged and about the amount of a fee²¹;
 - 217. (b) no amount is deducted or levied from sums staked or won otherwise than in accordance with regulations, which may make provision about the circumstances in which an amount may be deducted or levied, about the amount of the deduction or levy and about the method by which the amount is determined²²;
 - 218. (c) the public²³ is excluded from any area of the club's or institute's premises where gaming is taking place²⁴; and
 - 219. (d) children²⁵ and young persons²⁶ are excluded from any area of the club's or institute's premises where gaming is taking place²⁷.
- 140

A club gaming permit must also, by virtue of these provisions, be subject to the condition that each person who participates in gaming in reliance on the permit:

- 1984 (i) is a member of the club or institute who applied for membership, was nominated for membership or became a member, at least 48 hours before he participates; or
- 1985 (ii) is a guest of a member of the club or institute²⁸ who would be entitled to participate by virtue of head (i) above²⁹;

and to the conditions:

- 1986 (A) that no child or young person use a Category B or Category C gaming machine on the club's or institute's premises; and
- 1987 (B) that the holder comply with any relevant provision of a code of practice³⁰ about the location and operation of a gaming machine³¹.

Such permits allow Category B, Category C or Category D gaming machines to be made available for use, and the activities described in heads (2) and (3) above to take place, without an operating licence³² or premises licence³³, in circumstances which would otherwise constitute an offence³⁴.

- 1 As to the licensing authorities see PARA 3.
 - 2 As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gaming' see PARA 310.
 - 3 As to the meaning of 'premises' see PARA 311 note 5.
 - 4 As to the meaning of 'members' club' see PARA 578.
 - 5 As to the meaning of 'miners' welfare institute' see PARA 580.
 - 6 Gambling Act 2005 s 271(2).
 - 7 As to the meaning of 'vehicle' see PARA 311 note 5.
 - 8 As to the meaning of 'vessel' see PARA 311 note 5.
 - 9 Gambling Act 2005 Sch 12 para 29.
 - 10 As to the meaning of 'authorise' see PARA 349 note 5.
 - 11 As to the meaning of 'gaming machine' see PARA 547.
 - 12 The reference to a Category B machine in the Gambling Act 2005 s 271 is to be treated as referring to sub-category B3A or B4: Categories of Gaming Machine Regulations 2007, SI 2997/2158, reg 6(4). As to the meaning of 'Category B gaming machine' see PARA 550.
 - 13 As to the meaning of 'Category C gaming machine' see PARA 551.
 - 14 As to the meaning of 'Category D gaming machine' see PARA 552.
 - 15 Ie the conditions in the Gambling Act 2005 s 269: see PARA 665.
 - 16 As to the first condition for exempt gaming see the Gambling Act 2005 s 269(2); and PARA 665.
 - 17 As to the meaning of 'game of chance' see PARA 310.
 - 18 As to the meaning of 'prescribed' see PARA 578 note 3. For these purposes, the games of chance the provision of facilities for which is authorised by a club gaming permit are pontoon and chemin de fer; but the reference to the game of pontoon does not include a reference to the game of blackjack, or any other form of pontoon whose rules do not provide for the right to hold the bank to pass amongst players in certain events arising in the course of play: Gambling Act 2005 (Club Gaming Permits) (Authorised Gaming) Regulations 2007, SI 2007/1945, reg 2.
 - 19 Gambling Act 2005 s 271(3).
 - 20 As to the meaning of 'participation fee' see PARA 370 note 4.
 - 21 Gambling Act 2005 s 271(4)(a). Regulations under s 271(4)(a) or (b) (see heads (a)-(b) in the text) may: (1) make different provision for different classes of club or institute; (2) make different provision for different classes or descriptions of game; (3) make different provision for different classes or descriptions of fee, deduction or levy: s 271(5).
- For the purposes of s 271(4)(a) (see head (a) in the text), a participation fee may be charged in respect of any of the games of chance prescribed by the Gambling Act 2005 (Club Gaming Permits) (Authorised Gaming) Regulations 2007, SI 2007/1945, reg 2(1) (see note 18): reg 3(1). The maximum participation fee that a person may be charged in respect of entitlement to participate on any one day in any of the games prescribed by reg 2(1) is £3 (exclusive of value added tax); and for these purposes, a reference to a day is a reference to a period of 24 hours beginning at midday: reg 3(2), (3).

22 Gambling Act 2005 s 271(4)(b); and see s 271(5), cited in note 21. For these purposes, the reference to a deduction or levy in respect of gaming provided by, on behalf of or by arrangement with a club or institute is to a deduction or levy made by or on behalf of (1) the club or institute; or (2) a person providing facilities for gaming on behalf of, or by arrangement with, the club or institute: s 272(1).

23 For these purposes, 'the public' means persons other than (1) members of the club or institute; (2) guests of members of the club or institute; (3) staff of the club or institute; and (4) persons providing services to or for the club or institute: Gambling Act 2005 s 272(2). A person is not to be treated for these purposes, or for the purposes of s 271(6) (see PARA 581), as the guest of a member if the member extends an invitation (a) having had no previous acquaintance with the person; and (b) for the purpose only of enabling the person to take advantage of facilities for gaming: s 272(4).

24 Gambling Act 2005 s 271(4)(c). For the purposes of s 271(4)(c), (d) (see heads (c)-(d) in the text), a reference to an area where gaming is taking place is a reference to any place in which it is possible to participate in the gaming: s 272(3).

25 As to the meaning of 'child' see PARA 331 note 2.

26 As to the meaning of 'young person' see PARA 353 note 5.

27 Gambling Act 2005 s 271(4)(d); and see note 24.

28 See note 23.

29 Gambling Act 2005 s 271(6).

30 Is a code of practice under the Gambling Act 2005 s 24: see PARA 337. The Gambling Commission issued a relevant code of practice in June 2007: see *Gaming Machine Permits Code of Practice--Club Gaming Permits and Club Machine Permits--Alcohol Licensed Premises Permits and Permissions* (June 2007, Gambling Commission) set out in Paterson's Licensing Acts (116th Edn, 2008) at para 3.2675. That code of practice is also published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk.

31 Gambling Act 2005 s 271(7).

32 As to the meaning of 'operating licence' see PARA 349 note 2.

33 As to the meaning of 'premises licence' see PARA 460 note 1.

34 See the Gambling Act 2005 s 271(1). As to the offences that would otherwise be committed see s 33; and PARA 615; s 37; and PARA 616; s 242; and PARA 638. Section 33, however, is not disapplied in relation to high turnover bingo during a high turnover period: see s 275; and PARA 667.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(8) CLUB GAMING PERMITS AND CLUB MACHINE PERMITS/(i) Definitions/B. PERMITS/582. Nature of club machine permit.

582. Nature of club machine permit.

A club machine permit is a permit issued by a licensing authority¹ authorising up to three gaming machines², each of which must be of Category B³, Category C⁴ or Category D⁵, to be made available for use on premises⁶ on which a members' club⁷, a commercial club⁸ or a miners' welfare institute⁹ operates, and in the course of the activities of the club or institute¹⁰. A club machine permit may not be issued in respect of a vehicle¹¹ or vessel¹², or part of a vehicle or vessel¹³.

A club machine permit must, by virtue of this provision, be subject to the conditions:

- 1988 (1) that no child¹⁴ or young person¹⁵ use a Category B or Category C gaming machine on the club's or institute's premises; and
- 1989 (2) that the holder comply with any relevant provision of a code of practice¹⁶ about the location and operation of a gaming machine¹⁷;

and a club machine permit held by a members' club or a miners' welfare institute must, by virtue of this provision, be subject to the condition that each person to whom a machine is made available for use in reliance on the permit:

- 1990 (a) is a member of the club or institute who applied for membership, was nominated for membership or became a member, at least 48 hours before he uses the machine; or
- 1991 (b) is a guest of a member of the club or institute¹⁸ who would be entitled to use the machine by virtue of head (a) above¹⁹.

Such permits allow Category B, Category C or Category D gaming machines to be made available for use without an operating licence²⁰ or a premises licence²¹, in circumstances which would otherwise constitute an offence²².

1 As to the licensing authorities see PARA 3.

2 As to the meaning of 'gaming machine' see PARA 547.

3 The reference to a Category B machine in the Gambling Act 2005 s 273 is to be treated as referring to sub-category B3A or B4: Categories of Gaming Machine Regulations 2007, SI 2997/2158, reg 6(4). As to the meaning of 'Category B gaming machine' see PARA 550.

4 As to the meaning of 'Category C gaming machine' see PARA 551.

5 As to the meaning of 'Category D gaming machine' see PARA 552.

6 As to the meaning of 'premises' see PARA 311 note 5.

7 As to the meaning of 'members' club' see PARA 578.

8 As to the meaning of 'commercial club' see PARA 579.

9 As to the meaning of 'miners' welfare institute' see PARA 580.

- 10 Gambling Act 2005 s 273(2).
- 11 As to the meaning of 'vehicle' see PARA 311 note 5.
- 12 As to the meaning of 'vessel' see PARA 311 note 5.
- 13 Gambling Act 2005 Sch 12 para 29.
- 14 As to the meaning of 'child' see PARA 331 note 2.
- 15 As to the meaning of 'young person' see PARA 353 note 5.
- 16 Is a code of practice under the Gambling Act 2005 s 24: see PARA 337. The Gambling Commission issued a relevant code of practice in June 2007: see *Gaming Machine Permits Code of Practice--Club Gaming Permits and Club Machine Permits--Alcohol Licensed Premises Permits and Permissions* (June 2007, Gambling Commission) set out in Paterson's Licensing Acts (116th Edn, 2008) at para 3.2675. That code of practice is also published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk.
- 17 Gambling Act 2005 s 273(4).
- 18 For these purposes, a person is not to be treated as the guest of a member if the member extends an invitation (1) having had no previous acquaintance with the person; and (2) for the purpose only of enabling the person to take advantage of facilities for gaming: Gambling Act 2005 s 273(5). As to the meaning of 'gaming' see PARA 310.
- 19 Gambling Act 2005 s 273(3).
- 20 As to the meaning of 'operating licence' see PARA 349 note 2.
- 21 As to the meaning of 'premises licence' see PARA 460 note 1.
- 22 See the Gambling Act 2005 s 273(1). As to the offences that would otherwise be committed see s 37; and PARA 616; s 242; and PARA 638.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(ii) Procedure with regard to Permits

583. Application for a permit.

A members' club¹ or miners' welfare institute² may apply to a licensing authority³ for a club gaming permit⁴; and a members' club, commercial club⁵ or miners' welfare institute may apply to a licensing authority for a club machine permit⁶. An application must:

- 1992 (1) be made to a licensing authority in whose area the premises⁷ are wholly or partly situated;
- 1993 (2) specify the premises in relation to which the permit is sought;
- 1994 (3) be made in the prescribed form and manner⁸;
- 1995 (4) contain or be accompanied by the prescribed information and documents⁹; and
- 1996 (5) be accompanied by the prescribed fee¹⁰.

A club or institute making an application for a permit must within the prescribed time¹¹ send a copy of the application and of any accompanying documents to the Gambling Commission¹², and to the chief officer of police for any police area¹³ in which the premises are wholly or partly situated¹⁴. If a club or institute fails to comply with that requirement the application and any permit issued in response to it are to have no effect¹⁵. A person who receives a copy of an application for a permit in accordance with this requirement may object to the application within the prescribed period of time¹⁶ and in the prescribed manner¹⁷. Where, however, the applicant for a permit is the holder of a club premises certificate under the Licensing Act 2003¹⁸, and the application asserts that that condition is satisfied and is accompanied by the certificate, the above requirement to send copies of the application does not apply and there is no procedure for making objections¹⁹.

1 As to the meaning of 'members' club' see PARA 578.

2 As to the meaning of 'miners' welfare institute' see PARA 580.

3 As to the licensing authorities see PARA 3; and as to the delegation of functions to licensing committees and sub-committees see PARA 584 note 3.

4 Gambling Act 2005 Sch 12 para 1(1). As to the meaning of 'club gaming permit' see PARA 581.

5 As to the meaning of 'commercial club' see PARA 579.

6 Gambling Act 2005 Sch 12 para 1(2). As to the meaning of 'club machine permit' see PARA 582.

7 As to the meaning of 'premises' see PARA 311 note 5. See also Sch 12 para 29, cited in PARAS 581-582.

8 'Prescribed' means prescribed by the Secretary of State by regulations: Gambling Act 2005 Sch 12 para 30. As to the Secretary of State see PARA 2. For the prescribed form see the Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007, SI 2007/1834, regs 4, 17, Sch 1 (Sch 1 substituted by SI 2007/2689).

9 Where an application is made by an existing Part 2 or Part 3 operator, the application must be accompanied by a copy of (1) the applicant's registration certificate within the meaning of the Gaming Act Sch

3 para 18(1) (repealed) or Sch 4 para 16(1) (repealed), if the applicant is an existing Part 2 operator; or (2) a copy of the certificate issued to the applicant under Sch 7 para 21 (repealed), if the applicant is an existing Part 3 operator: Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007, SI 2007/1834, reg 5. 'Existing Part 2 operator' means an applicant (a) who is registered (i) under the Gaming Act 1968 Pt II (repealed) Act (a 'Part 2 registration') and the registration had effect immediately before 1 September 2007; or (ii) under that Part on or after 1 September 2007; and (b) whose application (i) relates to the same or substantially the same premises as those to which the Part 2 registration relates; (ii) complies with the Gambling Act 2005 Sch 12 para 2(b), (e) (see heads (2), (5) in the text) and (where applicable) Sch 12 para 3; and (iii) is made before the relevant date; and 'existing Part 3 operator' means an applicant (A) who is registered (aa) under the Gaming Act 1968 Pt III (repealed) (a 'Part 3 registration') and the registration had effect immediately before 1 September 2007; or (bb) under that Part on or after 1 September 2007; and (B) whose application (aa) relates to the same or substantially the same premises as those to which the Part 3 registration relates; (bb) complies with the Gambling Act 2005 Sch 12 para 2(b), (e) and (where applicable) Sch 12 para 3; and (cc) is made before the relevant date: Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007, SI 2007/1834, reg 3(1), (2). 'Relevant date', in relation to a Part 2 registration, has the meaning given in the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 80(3)-(5); and in relation to a Part 3 registration, has the meaning given in Sch 4 para 88(3)-(5): Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007, SI 2007/1834, reg 3(1).

The licensing authority has a duty to convert a Part 2 registration into a club gaming permit (see the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 80 (amended by SI 2007/1157)); and to convert a Part 3 registration into a club machine permit (see the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 88 (amended by SI 2007/1157)). See generally the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 Pt 9 (paras 78-93) (as so amended).

10 Gambling Act 2005 Sch 12 para 2. The prescribed fee is £200: Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007, SI 2007/1834, reg 8(1). Where, however, the application is made in accordance with the Gambling Act 2005 Sch 12 para 10 (which applies where the applicant for a permit is the holder of a club premises certificate under the Licensing Act 2003 s 72: see PARA 90), or the application is made by an existing Part 2 operator or an existing Part 3 operator, the fee is £100: Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007, SI 2007/1834, reg 8(1). As to the procedure under the Gambling Act 2005 Sch 12 para 10 see PARA 585.

11 The prescribed time is within a period of seven days beginning on the date on which the application is made: Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007, SI 2007/1834, reg 7.

12 As to the Gambling Commission see PARA 4.

13 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

14 Gambling Act 2005 Sch 12 para 3(1).

15 Gambling Act 2005 Sch 12 para 3(2).

16 An objection to an application must be made within a period of 28 days beginning on the date on which the application was made to the licensing authority: Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007, SI 2007/1834, reg 9(a).

17 Gambling Act 2005 Sch 12 para 4. An objection must be made by sending to the licensing authority to which the application is made two copies of a written statement setting out the reasons for the objection: Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007, SI 2007/1834, reg 9(b).

18 Ie a club premises certificate under the Licensing Act 2003 s 72: see PARA 90.

19 See the Gambling Act 2005 Sch 12 para 10(1), (2)(a).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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584. Consideration and determination of application, except where the fast-track procedure applies.

Except where the fast-track procedure for an application by the holder of a club premises certificate under the Licensing Act 2003¹ applies², the licensing authority³ to which an application for a club gaming permit⁴ or a club machine permit⁵ ('a permit') is made must consider the application and must either grant it or refuse it⁶. A licensing authority may not attach conditions to a permit⁷.

In exercising a statutory function with regard to such permits⁸, a licensing authority must have regard to any relevant guidance issued by the Gambling Commission⁹, and, subject to that, to the licensing objectives¹⁰. Having regard to those matters, a licensing authority may refuse an application for a permit only on one or more of the following grounds:

- 1997 (1) that the applicant is not, in the case of an application for a club gaming permit, a members' club¹¹ or a miners' welfare institute¹², or in the case of an application for a club machine permit, a members' club, a commercial club¹³ or a miners' welfare institute;
- 1998 (2) that the premises¹⁴ on which the applicant conducts its activities are used wholly or mainly by children¹⁵, by young persons¹⁶, or by both;
- 1999 (3) that an offence, or a breach of a condition of a permit, has been committed in the course of gaming¹⁷ activities carried on by the applicant;
- 2000 (4) that a permit held by the applicant has been cancelled during the period of ten years ending with the date of the application; or
- 2001 (5) that an objection to the application¹⁸ has been made¹⁹.

If a licensing authority is satisfied in relation to an application for a permit of the matters specified in head (1) or head (2) above, it must refuse the application²⁰. Before refusing an application for a permit a licensing authority must hold a hearing to consider the application and any objection²¹ made²²; but it may dispense with the requirement for a hearing with the consent of the applicant, and of any person who has made²³ and not withdrawn an objection²⁴. Where a licensing authority rejects an application for a permit, the authority must as soon as is reasonably practicable give notice²⁵ of its decision and the reasons for it to the applicant, to the Commission, and to the chief officer of police for any area²⁶ in which the premises specified in the application are wholly or partly situated²⁷.

Where a licensing authority grants an application for a permit, the authority must as soon as is reasonably practicable:

- 2002 (a) give notice of its decision and, where an objection was made²⁸, of the reasons for it to the applicant, to the Commission, and to the chief officer of police for any area in which the premises specified in the application are wholly or partly situated; and
- 2003 (b) issue the permit to the applicant²⁹.

¹ ie a club premises certificate under the Licensing Act 2003 s 72: see PARA 90.

- 2 le the procedure under the Gambling Act 2005 Sch 12 para 10: see PARA 585.
- 3 As to the licensing authorities see PARA 3. The Gambling Act 2005 s 154 (delegation of functions to licensing committees and sub-committees: see PARAS 466-468) has effect in relation to the functions of a licensing authority under Sch 12 as it has effect in relation to functions of a licensing authority under Pt 8 (ss 150-213, Sch 9: see PARA 460 et seq): Sch 12 para 28(1). Arrangements may not, however, be made for the discharge by an officer of the following functions: (1) the determination of an application for a permit in respect of which an objection has been made under Sch 12 and not withdrawn; and (2) cancellation of a permit under Sch 12 para 21 (see PARA 587): see Sch 12 para 28(2).
- 4 As to the meaning of 'club gaming permit' see PARA 581.
- 5 As to the meaning of 'club machine permit' see PARA 582.
- 6 Gambling Act 2005 Sch 12 para 5. Schedule 12 paras 5, 6 do not apply in the case of an application to which the fast-track procedure applies: see Sch 12 para 10(2)(a).
- 7 Gambling Act 2005 Sch 12 para 8(2).
- 8 le a function under the Gambling Act 2005 Sch 12: see PARA 583; the text and notes 1-7, 9-29; and PARA 585 et seq.
- 9 le under the Gambling Act 2005 s 25: see PARA 338. As to the Gambling Commission see PARA 4.
- 10 Gambling Act 2005 Sch 12 para 27. As to the licensing objectives see PARA 331.
- 11 As to the meaning of 'members' club see PARA 578.
- 12 As to the meaning of 'miners' welfare institute' see PARA 580.
- 13 As to the meaning of 'commercial club' see PARA 579.
- 14 As to the meaning of 'premises' see PARA 311 note 5. See also the Gambling Act 2005 Sch 12 para 29, cited in PARAS 581-582.
- 15 As to the meaning of 'child' see PARA 331 note 2.
- 16 As to the meaning of 'young person' see PARA 353 note 5.
- 17 As to the meaning of 'gaming' see PARA 310.
- 18 le under the Gambling Act 2005 Sch 12 para 4: see PARA 583.
- 19 Gambling Act 2005 Sch 12 para 6(1); and see note 6.
- 20 Gambling Act 2005 Sch 12 para 6(2); and see note 6.
- 21 See note 18.
- 22 Gambling Act 2005 Sch 12 para 7(1). Schedule 12 paras 7, 8 apply in the case of an application to which the fast-track procedure applies with the omission of any reference to objections: see Sch 12 para 10(2)(b).
- 23 See note 18.
- 24 Gambling Act 2005 Sch 12 para 7(2); and see note 22.
- 25 As to the method of giving notice see PARA 356 note 5.
- 26 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.
- 27 Gambling Act 2005 Sch 12 para 9.
- 28 See note 18.
- 29 Gambling Act 2005 Sch 12 para 8(1); and see note 22. As to the form of the permit see PARA 586.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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585. Fast-track procedure for holder of club premises certificate.

If the applicant for a club gaming permit¹ or a club machine permit² ('a permit') is the holder of a club premises certificate under the Licensing Act 2003³, and the application asserts that that condition is satisfied and is accompanied by the certificate, the following provisions apply⁴.

The licensing authority⁵ to which such an application is made must grant it unless the authority thinks:

- 2004 (1) that the applicant is established or conducted wholly or mainly for the purposes of the provision of facilities for gaming⁶, other than gaming of a prescribed kind⁷;
- 2005 (2) that the applicant is established or conducted wholly or mainly for the purposes of the provision of facilities for gaming of a prescribed kind⁸ and also provides facilities for gaming of another kind; or
- 2006 (3) that a club gaming permit or club machine permit issued to the applicant has been cancelled during the period of ten years ending with the date of the application⁹.

Before refusing an application for a permit a licensing authority must hold a hearing to consider the application¹⁰; but it may dispense with the requirement for a hearing with the consent of the applicant¹¹. Where a licensing authority rejects an application for a permit, the authority must as soon as is reasonably practicable give notice¹² of its decision and the reasons for it to the applicant, to the Gambling Commission¹³, and to the chief officer of police for any area¹⁴ in which the premises specified in the application are wholly or partly situated¹⁵.

Where a licensing authority grants an application for a permit, the authority must as soon as is reasonably practicable:

- 2007 (a) give notice of its decision to the applicant, to the Commission, and to the chief officer of police for any area in which the premises specified in the application are wholly or partly situated; and
- 2008 (b) issue the permit to the applicant¹⁶.

A licensing authority may not attach conditions to a permit¹⁷.

1 As to the meaning of 'club gaming permit' see PARA 581.

2 As to the meaning of 'club machine permit' see PARA 582.

3 Ie a club premises certificate under the Licensing Act 2003 s 72: see PARA 90.

4 Gambling Act 2005 Sch 12 para 10(1). Regulations prescribing anything for the purposes of the Gambling Act 2005 may, in particular, make provision that differs in effect according to whether or not a permit is granted in pursuance of an application to which Sch 12 para 10 applies: Sch 12 para 10(4).

5 As to the licensing authorities see PARA 3; as to the delegation of functions to licensing committees and sub-committees see PARA 584 note 3; and as to the matters to which an authority must have regard in exercising its functions under the Gambling Act 2005 Sch 12 see PARA 584 text and notes 8-10.

6 As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gaming' see PARA 310.

7 As to the meaning of 'prescribed' see PARA 583 note 8. Bridge and whist are prescribed for these purposes: Gambling Act 2005 (Gaming in Clubs) Regulations 2007, SI 2007/1942, reg 3.

8 See note 7.

9 Gambling Act 2005 Sch 12 para 10(3).

10 Gambling Act 2005 Sch 12 para 7(1) (Sch 12 paras 7, 8 modified by Sch 10 para 10(2)(b)).

11 Gambling Act 2005 Sch 12 para 7(2) (as modified: see note 10).

12 As to the method of giving notice see PARA 356 note 5.

13 As to the Gambling Commission see PARA 4.

14 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

15 Gambling Act 2005 Sch 12 para 9.

16 Gambling Act 2005 Sch 12 para 8(1) (as modified: see note 10). As to the form of the permit see PARA 586.

17 Gambling Act 2005 Sch 12 para 8(2).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(8) CLUB GAMING PERMITS AND CLUB MACHINE PERMITS/(ii) Procedure with regard to Permits/586. Form of permit.

586. Form of permit.

A club gaming permit¹ or a club machine permit² ('a permit') must be in the prescribed form³ and must specify:

- 2009 (1) the name of the club or institute in respect of which it is issued;
- 2010 (2) the premises⁴ to which it relates;
- 2011 (3) whether it is a club gaming permit or a club machine permit;
- 2012 (4) the date on which it takes effect; and
- 2013 (5) such other information as may be prescribed⁵.

If the application for the permit was made in accordance with the fast-track procedure⁶, the permit must also identify the club premises certificate⁷ under the Licensing Act 2003⁸.

1 As to the meaning of 'club gaming permit' see PARA 581.

2 As to the meaning of 'club machine permit' see PARA 582.

3 As to the meaning of 'prescribed' see PARA 583 note 8. For the prescribed form of club gaming permit see the Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007, SI 2007/1834, regs 10, 17, Sch 2; and for the prescribed form of club machine permit see regs 11, 17, Sch 3.

4 As to the meaning of 'premises' see PARA 311 note 5. See also the Gambling Act 2005 Sch 12 para 29, cited in PARAS 581-582.

5 Gambling Act 2005 Sch 12 para 11(1).

6 Ie in accordance with the Gambling Act 2005 Sch 12 para 10: see PARA 585.

7 Ie the club premises certificate under the Licensing Act 2003 s 72: see PARA 90.

8 Gambling Act 2005 Sch 12 para 11(2).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(8) CLUB GAMING PERMITS AND CLUB MACHINE PERMITS/(ii) Procedure with regard to Permits/587. Duration of permit.

587. Duration of permit.

A club gaming permit¹ or a club machine permit² ('a permit') ceases to have effect at the end of the period of ten years beginning with the date on which it is issued unless it ceases to have effect before that time in accordance with a relevant statutory provision³ or it is renewed⁴. A permit issued in pursuance of an application to which the fast-track procedure applies⁵ does not, however, so cease to have effect⁶. Instead, it lapses if the club premises certificate⁷ on which the application relied ceases to have effect⁸; and it may also cease to have effect by reason of surrender⁹, cancellation¹⁰ or forfeiture¹¹.

If the holder of a permit ceases to be a members' club¹², whether or not it becomes a commercial club¹³, or ceases to be a commercial club or a miners' welfare institute¹⁴, the permit lapses¹⁵; but this does not apply to a permit issued in pursuance of an application to which the fast-track procedure applies¹⁶.

A permit ceases to have effect upon being surrendered by notice¹⁷ given by the holder of the permit to the issuing licensing authority¹⁸. Such a notice must be accompanied by either the permit, or a statement explaining why it is not reasonably practicable to produce the permit¹⁹.

The licensing authority which issues a permit must as soon as is reasonably practicable inform the Gambling Commission²⁰, and the chief officer of police for any area²¹ in which the premises²² to which the permit relates are wholly or partly situated, if the authority either believes that the permit has lapsed²³ or receives notice²⁴ of surrender²⁵.

The licensing authority which issued a permit may cancel it if the authority thinks:

- 2014 (1) that the premises on which the holder of the permit conducts its activities are used wholly or mainly by children²⁶, by young persons²⁷ or by both; or
- 2015 (2) that an offence, or a breach of a condition of a permit, has been committed in the course of gaming²⁸ activities carried on by the holder of the permit²⁹.

Before so cancelling a permit a licensing authority must:

- 2016 (a) give the holder of the permit at least 21 days' notice of the authority's intention to consider cancelling the permit;
- 2017 (b) consider any representations made by the holder;
- 2018 (c) hold a hearing if the holder requests one; and
- 2019 (d) comply with any prescribed requirements³⁰ for the procedure to be followed in considering whether to cancel a permit³¹.

If a licensing authority cancels a permit, the authority must as soon as is reasonably practicable give notice of the cancellation and the reasons for it to the holder, to the Commission, and to the chief officer of police for any area in which the premises to which the permit relates are wholly or partly situated³². The cancellation of a permit does not take effect until either the period for instituting an appeal³³ has expired without an appeal being brought, or any appeal brought has been determined³⁴.

The licensing authority which issued a permit must cancel it if the holder fails to pay³⁵ the annual fee³⁶; but a licensing authority may disapply that provision if the authority thinks that a failure to pay is attributable to administrative error³⁷.

Where the holder of a permit, or an officer of the holder of a permit, is convicted of an offence under the Gambling Act 2005 by or before a court in Great Britain³⁸, the court may order forfeiture of the permit³⁹. Such forfeiture must be on such terms, which may include terms as to suspension, as may be specified by:

- 2020 (i) the court which orders forfeiture;
- 2021 (ii) a court to which an appeal against the conviction, or against any order made on the conviction, has been or could be made; or
- 2022 (iii) the High Court, if hearing proceedings relating to the conviction⁴⁰.

The terms on which a forfeiture order is made must, in particular, include a requirement that the holder deliver to the licensing authority which issued the permit, within such time as the order may specify, either the permit, or a statement explaining why it is not reasonably practicable to produce the permit⁴¹. As soon as is reasonably practicable after making an order for forfeiture under these provisions the court must notify the licensing authority which issued the permit⁴². Subject to any express provision made by the court⁴³, a permit ceases to have effect on the making of such a forfeiture order⁴⁴.

1 As to the meaning of 'club gaming permit' see PARA 581.

2 As to the meaning of 'club machine permit' see PARA 582.

3 In accordance with a provision of the Gambling Act 2005 Sch 12: see PARAS 583-586; the text and notes 4-44; and PARA 588 et seq.

4 Gambling Act 2005 Sch 12 para 17(1).

5 In an application to which the Gambling Act 2005 Sch 12 para 10 applies: see PARA 585.

6 Gambling Act 2005 Sch 12 para 17(2)(a).

7 In the club premises certificate under the Licensing Act 2003 s 72: see PARA 90.

8 Gambling Act 2005 Sch 12 para 17(2)(c).

9 In accordance with the Gambling Act 2005 Sch 12 para 19: see the text and notes 17-19.

10 In accordance with the Gambling Act 2005 Sch 12 paras 21, 22: see the text and notes 26-37.

11 Gambling Act 2005 Sch 12 para 17(2)(b). The reference in the text to forfeiture is to forfeiture in accordance with the Gambling Act 2005 Sch 12 para 23: see the text and notes 38-44.

12 As to the meaning of 'member's club' see PARA 578.

13 As to the meaning of 'commercial club' see PARA 579.

14 As to the meaning of 'miners' welfare institute' see PARA 580.

15 Gambling Act 2005 Sch 12 para 18(1).

16 Gambling Act 2005 Sch 12 para 18(2).

17 As to the method of giving notice see PARA 356 note 5.

18 Gambling Act 2005 Sch 12 para 19(1). As to the licensing authorities see PARA 3; as to the delegation of functions to licensing committees and sub-committees see PARA 584 note 3; and as to the matters to which an authority must have regard in exercising its functions under the Gambling Act 2005 Sch 12 see PARA 584 text and notes 8-10.

- 19 Gambling Act 2005 Sch 12 para 19(2).
- 20 As to the Gambling Commission see PARA 4.
- 21 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.
- 22 As to the meaning of 'premises' see PARA 311 note 5. See also the Gambling Act 2005 Sch 12 para 29, cited in PARAS 581-582.
- 23 Ie under the Gambling Act 2005 Sch 12 para 17(2)(c) (see the text and notes 7-8) or Sch 12 para 18 (see the text and notes 12-16).
- 24 Ie under the Gambling Act 2005 Sch 12 para 19: see the text and notes 17-19.
- 25 Gambling Act 2005 Sch 12 para 20(1), (2).
- 26 As to the meaning of 'child' see PARA 331 note 2.
- 27 As to the meaning of 'young person' see PARA 353 note 5.
- 28 As to the meaning of 'gaming' see PARA 310.
- 29 Gambling Act 2005 Sch 12 para 21(1).
- 30 As to the meaning of 'prescribed' see PARA 583 note 8. At the date at which this volume states the law, no regulations had been made prescribing the procedure for these purposes.
- 31 Gambling Act 2005 Sch 12 para 21(2).
- 32 Gambling Act 2005 Sch 12 para 21(3).
- 33 Ie the period specified in the Gambling Act 2005 Sch 12 para 25(5)(c): see PARA 590.
- 34 Gambling Act 2005 Sch 12 para 21(4). As to appeals see PARA 590.
- 35 Ie in accordance with the Gambling Act 2005 Sch 12 para 14: see PARA 588.
- 36 Gambling Act 2005 Sch 12 para 22(1).
- 37 Gambling Act 2005 Sch 12 para 22(2).
- 38 As to the meaning of 'Great Britain' see PARA 16 note 8.
- 39 Gambling Act 2005 Sch 12 para 23(1).
- 40 Gambling Act 2005 Sch 12 para 23(2).
- 41 Gambling Act 2005 Sch 12 para 23(4).
- 42 Gambling Act 2005 Sch 12 para 23(5).
- 43 Ie under the Gambling Act 2005 Sch 12 para 23(2): see heads (a)-(c) in the text.
- 44 Gambling Act 2005 Sch 12 para 23(3).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(8) CLUB GAMING PERMITS AND CLUB MACHINE PERMITS/(ii) Procedure with regard to Permits/588. Maintenance of permit.

588. Maintenance of permit.

The holder of a club gaming permit¹ or a club machine permit² ('a permit') must keep it on the premises³ to which it relates⁴. An occupier of premises to which a permit relates commits an offence if without reasonable excuse he fails to produce the permit on request for inspection by a constable⁵ or by an enforcement officer⁶.

The holder of a permit:

- 2023 (1) must pay a first annual fee⁷ to the issuing licensing authority⁸ within such period after the issue of the permit as may be prescribed⁹; and
- 2024 (2) must pay an annual fee¹⁰ to the issuing licensing authority before each anniversary of the issue of the permit¹¹;

but head (2) above does not apply in relation to an anniversary of the issue of a permit immediately before which the permit expires¹².

If information contained in a permit ceases to be accurate the holder of the permit must as soon as is reasonably practicable apply to the issuing licensing authority to have the permit varied¹³. The holder of a permit commits an offence if without reasonable excuse he fails to comply with this requirement¹⁴. Such an application must be accompanied by the prescribed fee¹⁵, and by either the permit, or a statement explaining why it is not reasonably practicable to produce the permit¹⁶. The licensing authority to which such an application is made must issue a copy of the permit varied in accordance with the application and the copy is to be treated as if it were the original permit¹⁷. If, however, the authority thinks that it would refuse an application for the permit were it made anew, the authority may refuse the application for variation and may cancel the permit¹⁸.

Where a permit is lost, stolen or damaged, the holder may apply to the issuing licensing authority for a copy¹⁹. Such an application must be accompanied by the prescribed fee²⁰. A licensing authority must grant such an application if satisfied that the permit has been lost, stolen or damaged, and that where the permit has been lost or stolen, the loss or theft has been reported to the police²¹. As soon as is reasonably practicable after granting such an application, a licensing authority must issue a copy of the permit certified by the authority as a true copy, and the copy is to be treated as if it were the original permit²².

1 As to the meaning of 'club gaming permit' see PARA 581.

2 As to the meaning of 'club machine permit' see PARA 582.

3 As to the meaning of 'premises' see PARA 311 note 5. See also the Gambling Act 2005 Sch 12 para 29, cited in PARAS 581, 582.

4 Gambling Act 2005 Sch 12 para 12.

5 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

6 Gambling Act 2005 Sch 12 para 13(1). As to the meaning of 'enforcement officer' see PARA 342 note 7. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: Gambling Act 2005 Sch 12 para 13(2). As to the standard scale see PARA 17 note 21.

7 For these purposes, 'annual fee' means a fee of such amount as may be prescribed: Gambling Act 2005 Sch 12 para 14(2). The first annual fee for a permit payable to the issuing licensing authority under Sch 12 para 14(1)(a) (see head (1) in the text) is £50: Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007, SI 2007/1834, reg 12.

8 As to the licensing authorities see PARA 3; as to the delegation of functions to licensing committees and sub-committees see PARA 584 note 3; and as to the matters to which an authority must have regard in exercising its functions under the Gambling Act 2005 Sch 12 see PARA 584 text and notes 8-10.

9 Where a permit comes into effect on the issue date, the first annual fee for the permit must be paid within 30 days after that date: Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007, SI 2007/1834, reg 14(1). Where a permit specifies that it is to come into effect on a date after the issue date, the first annual fee for the permit must be paid within (1) the relevant period; or (2) 12 months, after the issue date, whichever is sooner (reg 14(2)); but this does not apply to a permit issued before 1 September 2007 (reg 14(3)). For these purposes, 'the effective date', in relation to a permit which specifies that it is to come into effect on a date after the issue date, means the date so specified; 'the issue date' means the date on which a permit is issued; and 'the relevant period', in relation to a permit, means the period which is equal to the sum of (a) the period between the issue date and the effective date; and (b) 30 days: reg 14(4).

10 The annual fee for a permit payable to the issuing licensing authority under Sch 12 para 14(1)(b) (see head (2) in the text) is £50: Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007, SI 2007/1834, reg 13.

11 Gambling Act 2005 Sch 12 para 14(1).

12 Gambling Act 2005 Sch 12 para 14(3). As to the expiry of a permit see Sch 12 para 17; and PARA 587.

13 Gambling Act 2005 Sch 12 para 15(1).

14 Gambling Act 2005 Sch 12 para 15(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: Sch 12 para 15(7).

15 The fee to accompany an application to vary a permit is £100: Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007, SI 2007/1834, reg 15.

16 Gambling Act 2005 Sch 12 para 15(2).

17 Gambling Act 2005 Sch 12 para 15(3).

18 Gambling Act 2005 Sch 12 para 15(4). Schedule 12 paras 7, 9, 25 (see PARAS 584, 590) apply in relation to such a decision as they apply in relation to a decision to refuse an application for a permit, and Sch 12 para 21 (see PARA 587) does not apply: Sch 12 para 15(5).

19 Gambling Act 2005 Sch 12 para 16(1).

20 Gambling Act 2005 Sch 12 para 16(2). The fee to accompany an application for a copy of a permit is £15: Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007, SI 2007/1834, reg 16.

21 Gambling Act 2005 Sch 12 para 16(3).

22 Gambling Act 2005 Sch 12 para 16(4).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(8) CLUB GAMING PERMITS AND CLUB MACHINE PERMITS/(ii) Procedure with regard to Permits/589. Renewal of permit.

589. Renewal of permit.

The holder of a club gaming permit¹ or a club machine permit² ('a permit') may apply to the issuing licensing authority³ for its renewal⁴. The application must be accompanied by the prescribed fee⁵. An application for the renewal of a permit may not be made before the period of three months ending with the date on which the permit would otherwise expire⁶, or after the beginning of the period of six weeks ending with that date⁷. A renewed permit ceases to have effect at the end of the period of ten years beginning with the date of renewal⁸ unless it is once more renewed⁹.

A permit does not cease to have effect by virtue only of its expiry¹⁰ while an application for renewal of the permit is pending, or an appeal¹¹ against a decision on an application for renewal of the permit is pending¹².

1 As to the meaning of 'club gaming permit' see PARA 581.

2 As to the meaning of 'club machine permit' see PARA 582.

3 As to the licensing authorities see PARA 3; as to the delegation of functions to licensing committees and sub-committees see PARA 584 note 3; and as to the matters to which an authority must have regard in exercising its functions under the Gambling Act 2005 Sch 12 see PARA 584 text and notes 8-10.

4 Gambling Act 2005 Sch 12 para 24(1). The provisions of Sch 12 (see PARAS 583-588, 590-591) have effect (with any necessary modifications) in relation to an application for renewal as they have effect in relation to an application for a permit: Sch 12 para 24(3).

5 Gambling Act 2005 Sch 12 para 2(e) (as applied: see note 4). As to the meaning of 'prescribed' see PARA 583 note 8. The fee to accompany an application to renew a permit is £200, or, where the application is made in accordance with Sch 12 para 10 (fast-track procedure: see PARA 585), £100: Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007, SI 2007/1834, reg 8(2).

6 As to the time when a permit expires see the Gambling Act 2005 Sch 12 para 17; and PARA 587. When the application for the permit was made under the fast-track procedure, the permit does not automatically expire at the end of ten years, but will lapse if the club premises certificate on which the application relied ceases to have effect: see PARA 587.

7 Gambling Act 2005 Sch 12 para 24(2).

8 The Gambling Act 2005 Sch 12 para 17 (see PARA 587) has effect in relation to a renewed permit with the substitution of the date of renewal for the date of issue: Gambling Act 2005 Sch 12 para 24(4).

9 See note 8.

10 Ie by virtue only of the Gambling Act 2005 Sch 12 para 17: see PARA 587.

11 As to appeals see PARA 591.

12 Gambling Act 2005 Sch 12 para 24(5).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(8) CLUB GAMING PERMITS AND CLUB MACHINE PERMITS/(ii) Procedure with regard to Permits/590. Appeals.

590. Appeals.

Where a licensing authority¹:

- 2025 (1) rejects an application for the issue or renewal of a club gaming permit² or a club machine permit³ ('a permit'), the applicant may appeal⁴;
- 2026 (2) grants an application for the issue or renewal of a permit in relation to which an objection was made⁵, the person who made the objection may appeal⁶;
- 2027 (3) cancels a permit, the holder may appeal⁷;
- 2028 (4) determines not to cancel a permit, any person who in accordance with regulations⁸ made representations to the authority in connection with its consideration whether to cancel the permit may appeal⁹.

Such an appeal must be instituted:

- 2029 (a) in the magistrates' court for a local justice area in which the premises¹⁰ to which the appeal relates are wholly or partly situated;
- 2030 (b) by notice of appeal given to the designated officer; and
- 2031 (c) within the period of 21 days beginning with the day on which the appellant receives notice of the decision against which the appeal is brought¹¹.

On such an appeal a magistrates' court may:

- 2032 (i) dismiss the appeal;
- 2033 (ii) substitute for the decision appealed against any decision that the licensing authority could have made;
- 2034 (iii) restore a permit, with effect from such date and on such transitional or other terms as the court may specify;
- 2035 (iv) remit the case to the licensing authority to decide in accordance with a direction of the court¹²;
- 2036 (v) make an order about costs¹³.

1 As to the licensing authorities see PARA 3; as to the delegation of functions to licensing committees and sub-committees see PARA 584 note 3; and as to the matters to which an authority must have regard in exercising its functions under the Gambling Act 2005 Sch 12 see PARA 584 text and notes 8-10.

2 As to the meaning of 'club gaming permit' see PARA 581.

3 As to the meaning of 'club machine permit' see PARA 582.

4 Gambling Act 2005 Sch 12 para 25(1).

5 Ie under the Gambling Act 2005 Sch 12 para 4: see PARA 583.

6 Gambling Act 2005 Sch 12 para 25(2).

7 Gambling Act 2005 Sch 12 para 25(3).

8 Ie regulations under the Gambling Act 2005 Sch 12 para 21(2)(d): see PARA 587.

9 Gambling Act 2005 Sch 12 para 25(4).

10 As to the meaning of 'premises' see PARA 311 note 5. See also the Gambling Act 2005 Sch 12 para 29, cited in PARAS 581-582.

11 Gambling Act 2005 Sch 12 para 25(5).

12 The Gambling Act 2005 Sch 12 para 25(1)-(4) (rights of appeal: see heads (1)-(4) in the text) applies to a decision of a licensing authority following remittal under Sch 12 para 25(6)(d) (see head (iv) in the text): Sch 12 para 25(8).

13 Gambling Act 2005 Sch 12 para 25(6).

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(8) CLUB GAMING PERMITS AND CLUB MACHINE PERMITS/(ii) Procedure with regard to Permits/591. Register of permits.

591. Register of permits.

A licensing authority¹ must:

- 2037 (1) maintain a register of club gaming permits² or club machine permits³ ('permits') issued by the authority together with such other information as may be prescribed⁴;
- 2038 (2) make the register and information available for inspection by members of the public at all reasonable times; and
- 2039 (3) make arrangements for the provision of a copy of an entry in the register, or of information, to a member of the public on request⁵.

A licensing authority may, however, refuse to provide a copy of an entry or of information unless the person seeking it pays a reasonable fee specified by the authority⁶.

The Secretary of State⁷ may make regulations about the form of the register and the manner in which it is maintained⁸. He may also make regulations:

- 2040 (a) requiring licensing authorities to give to the Gambling Commission⁹ specified information about permits issued by them;
- 2041 (b) requiring the Commission to maintain a register of the information provided to it under head (a) above;
- 2042 (c) requiring the Commission to grant access to the register to members of the public without charge;
- 2043 (d) requiring the Commission to make copies of entries available on request, and on payment of a reasonable fee, to members of the public;
- 2044 (e) excusing licensing authorities, wholly or partly, from compliance with heads (1) to (3) above¹⁰.

1 As to the licensing authorities see PARA 3; as to the delegation of functions to licensing committees and sub-committees see PARA 584 note 3; and as to the matters to which an authority must have regard in exercising its functions under the Gambling Act 2005 Sch 12 see PARA 584 text and notes 8-10.

2 As to the meaning of 'club gaming permit' see PARA 581.

3 As to the meaning of 'club machine permit' see PARA 582.

4 As to the meaning of 'prescribed' see PARA 583 note 8.

5 Gambling Act 2005 Sch 12 para 26(1).

6 Gambling Act 2005 Sch 12 para 26(2).

7 As to the Secretary of State see PARA 2.

8 Gambling Act 2005 Sch 12 para 26(3). At the date at which this volume states the law, no such regulations had been made.

9 As to the Gambling Commission see PARA 4.

10 Gambling Act 2005 Sch 12 para 26(4). At the date at which this volume states the law, no such regulations had been made.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(9) PRIZE GAMING PERMITS

592. Meaning of 'prize gaming'; nature and form of prize gaming permits.

Gaming¹ is prize gaming for the purposes of the Gambling Act 2005 if neither the nature nor the size of a prize² played for is determined by reference to the number of persons playing or the amount paid for or raised by the gaming³.

A prize gaming permit is a permit issued by a licensing authority⁴ authorising a person to provide facilities for gaming⁵ with prizes on specified premises⁶. A prize gaming permit may not be issued in respect of a vehicle⁷ or vessel⁸, or part of a vehicle or vessel⁹. Such a permit must be in the prescribed form¹⁰ and must specify:

- 2045 (1) the person to whom it is issued;
- 2046 (2) the nature of the gaming in respect of which it has effect;
- 2047 (3) the premises¹¹; and
- 2048 (4) the date on which it takes effect¹².

Such permits allow facilities for prize gaming to be provided without an operating licence¹³ or a premises licence¹⁴, in circumstances which would otherwise constitute an offence¹⁵, and provided that the gaming satisfies the specified statutory conditions¹⁶. Those conditions are:

- 2049 (a) compliance with such limits as may be prescribed¹⁷ in respect of participation fees¹⁸, and those limits may, in particular, relate to players, games or a combination; and different limits may be prescribed in respect of different classes or descriptions of fee¹⁹;
- 2050 (b) that:
 - 141 220. (i) all the chances to participate in a particular game must be acquired or allocated on one day and in the place where the game is played;
 - 221. (ii) the game must be played entirely on that day; and
 - 222. (iii) the result of the game must be made public in the place where the game is played, and as soon as is reasonably practicable after the game ends, and in any event on the day on which it is played²⁰;
- 142 2051 (c) that a prize for which a game is played, or the aggregate of the prizes for which a game is played:
 - 143 223. (i) where all the prizes are money, must not exceed the prescribed amount²¹; and
 - 224. (ii) in any other case, must not exceed the prescribed value²²;
- 144 2052 (d) that participation in the game by a person does not entitle him or another person to participate in any other gambling²³, whether or not he or the other person would also have to pay in order to participate in the other gambling²⁴.

- 1 As to the meaning of 'gaming' see PARA 310.
 - 2 As to the meaning of 'prize' see PARA 310 note 2.
 - 3 Gambling Act 2005 s 288.
 - 4 As to the meaning of 'licensing authority' see PARA 3.
 - 5 As to the meaning of 'providing facilities' for gambling see PARA 309.
 - 6 Gambling Act 2005 s 289(2). As to the meaning of 'premises' see PARA 311 note 5.
 - 7 As to the meaning of 'vehicle' see PARA 311 note 5.
 - 8 As to the meaning of 'vessel' see PARA 311 note 5.
 - 9 Gambling Act 2005 Sch 14 para 24.
 - 10 'Prescribed' means prescribed by regulations made by the Secretary of State: Gambling Act 2005 Sch 14 para 1. As to the Secretary of State see PARA 2. For the prescribed form of permit see the Gambling Act 2005 (Prize Gaming) (Permits) Regulations 2007, SI 2007/455, reg 4, Sch 1.
 - 11 'The premises', in relation to an application or permit, means the premises in respect of which the permit is sought or issued: Gambling Act 2005 Sch 14 para 1.
 - 12 Gambling Act 2005 Sch 14 para 12(1).
 - 13 As to the meaning of 'operating licence' see PARA 349 note 2.
 - 14 As to the meaning of 'premises licence' see PARA 460 note 1.
 - 15 As to the offences that would otherwise be committed see the Gambling Act 2005 ss 33, 37; and PARAS 615-616.
 - 16 See the Gambling Act 2005 s 289(1). The conditions referred to in the text are the conditions specified in s 293: see heads (a)-(d) in the text.
- The Secretary of State may by order provide for s 289 not to have effect in relation to prize gaming of a specified description: s 294. At the date at which this volume states the law, no such order had been made.
- 17 For these purposes, 'prescribed' means prescribed by regulations made by the Secretary of State: Gambling Act 2005 s 293(6).
 - 18 As to the meaning of 'participation fee' see PARA 370 note 4.
 - 19 Gambling Act 2005 s 293(1), (2). The maximum amounts that may be charged by way of participation fees for prize gaming for these purposes are as follows: (1) the participation fee charged for any one chance to win a prize in a game must not exceed 50 pence; (2) the aggregate amount of participation fees charged for any one chance to win a prize in a game must not exceed £500: Gambling Act 2005 (Limits on Prize Gaming) Regulations 2007, SI 2007/1777, reg 3(1), (2). The limit specified in head (1) above applies despite the fact that the chance provides the opportunity to win more than one prize: reg 3(3).
 - 20 Gambling Act 2005 s 293(3).
 - 21 Gambling Act 2005 s 293(4)(a). The maximum amounts in money or value that may be distributed or offered as prizes for prize gaming for these purposes are as follows: (1) where a prize for which a game is played is money, the amount of that prize must not exceed £50, where facilities for the gaming are provided in an adult gaming centre, and £35, in all other cases; (2) the aggregate amount or value of prizes for which a game is played must not exceed £500: Gambling Act 2005 (Limits on Prize Gaming) Regulations 2007, SI 2007/1777, reg 4(1), (2). As to the meaning of 'adult gaming centre' see PARA 349 note 14.
 - 22 Gambling Act 2005 s 293(4)(b); and see note 21.
 - 23 As to the meaning of 'gambling' see PARA 308.
 - 24 Gambling Act 2005 s 293(5).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

592 Meaning of 'prize gaming'; nature and form of prize gaming permits

NOTES 19, 21--Maximum participation fee that may be charged for any one chance to win a prize in a game increased from 50p to £1; limit on the aggregate amount of the participation fees that may be charged in a particular game remains £500: SI 2007/1777 replaced by the Gambling Act 2005 (Limits on Prize Gaming) Regulations 2009, SI 2009/1272.

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593. Application for permit.

An application for a prize gaming permit¹ ('a permit') may be made only by a person who occupies or proposes to occupy the premises². If the applicant for a permit is an individual, he must be an adult³. An application for a permit may not be made if a premises licence⁴ or a club gaming permit⁵ has effect in respect of the premises⁶.

An application for a permit must be made to a licensing authority⁷ in whose area the premises are wholly or partly situated⁸. Such an application must:

- 2053 (1) be made in such form and manner as the licensing authority⁹ may direct;
- 2054 (2) specify the premises;
- 2055 (3) specify the nature of the gaming¹⁰ in respect of which the permit is sought;
- 2056 (4) contain or be accompanied by such other information or documents as the licensing authority may direct; and
- 2057 (5) be accompanied by the prescribed fee¹¹.

1 As to the meaning of 'prize gaming permit' see PARA 592.

2 Gambling Act 2005 Sch 14 para 3(1). As to the meaning of 'the premises' see PARA 592 note 11; as to the meaning of 'premises' generally see PARA 311 note 5; and see also Sch 14 para 24, cited in PARA 592.

3 Gambling Act 2005 Sch 14 para 3(2). As to the meaning of 'adult' see PARA 372 note 7.

4 As to the meaning of 'premises licence' see PARA 460 note 1.

5 As to the meaning of 'club gaming permit' see PARA 581.

6 Gambling Act 2005 Sch 14 para 4.

7 As to the licensing authorities see PARA 3.

8 Gambling Act 2005 Sch 14 para 5.

9 'The licensing authority' (1) in relation to an application, means the licensing authority to which the application is made; and (2) in relation to a permit, means the licensing authority which issues it: Gambling Act 2005 Sch 14 para 1.

10 As to the meaning of 'gaming' see PARA 310.

11 Gambling Act 2005 Sch 14 para 6. As to the meaning of 'prescribed' see PARA 592 note 10. The fee to accompany an application for a permit is £300, but was £100 if the application was made by an existing operator: see the Gambling Act 2005 (Prize Gaming) (Permits) Regulations 2007, SI 2007/455, reg 4(a), (b). 'Existing operator' means a person who (1) made an application for a permit before 1 September 2007; (2) on the date on which he made the application (a) held a permit issued under the Lotteries and Amusements Act 1976 s 16 (repealed) (a 'section 16 permit'); or (b) was applying to the appropriate authority (within the meaning of Sch 3 para 1(1) (repealed)) for a section 16 permit, and the application (including any appeal) had not been finally determined; and (3) the application related to the same or substantially the same premises as those to which the section 16 permit, or the application for a section 16 permit, related: see the Gambling Act 2005 (Prize Gaming) (Permits) Regulations 2007, SI 2007/455, reg 2(1).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(9) PRIZE GAMING PERMITS/594. Consideration and determination of the application.

594. Consideration and determination of the application.

On considering an application for a prize gaming permit¹ ('a permit') a licensing authority² may either grant it or refuse it³. A licensing authority may not attach conditions to a permit⁴.

A licensing authority may prepare a statement of principles that it proposes to apply in exercising its statutory functions⁵ with regard to prize gaming permits⁶. Such a statement may, in particular, specify matters that the licensing authority proposes to consider in determining the suitability of an applicant for a permit⁷. In exercising those functions a licensing authority need not, but may, have regard to the licensing objectives⁸. It must, however, have regard to any relevant guidance issued⁹ by the Gambling Commission¹⁰.

A licensing authority may grant an application for a permit only if it has consulted the chief officer of police for a police area¹¹ in which the premises¹² are wholly or partly situated¹³. As soon as is reasonably practicable after granting an application a licensing authority must issue a permit to the applicant¹⁴.

A licensing authority may not refuse an application unless it has:

- 2058 (1) notified¹⁵ the applicant of its intention to refuse the application and of its reasons¹⁶; and
- 2059 (2) given the applicant an opportunity to make oral or written representations, or both oral and written representations¹⁷.

As soon as is reasonably practicable after refusing an application a licensing authority must notify the applicant of the refusal, and of the reasons for it¹⁸.

1 As to the meaning of 'prize gaming permit' see PARA 592.

2 As to the licensing authorities see PARA 3. The Gambling Act 2005 s 154 (delegation to licensing committees and sub-committees: see PARAS 466-468) has effect in relation to functions of a licensing authority under Sch 14 as it has effect in relation to the functions of a licensing authority under Pt 8 (ss 150-213, Sch 9: see PARA 460 et seq): Sch 14 para 7.

3 Gambling Act 2005 Sch 14 para 9(1).

4 Gambling Act 2005 Sch 14 para 9(2).

5 Its functions under the Gambling Act 2005 Sch 14: see PARA 593; the text and notes 1-4, 6-18; and PARA 595 et seq.

6 See the Gambling Act 2005 Sch 14 para 8(1).

7 Gambling Act 2005 Sch 14 para 8(2).

8 Gambling Act 2005 Sch 14 para 8(3)(a). As to the licensing objectives see PARA 331.

9 Its under the Gambling Act 2005 s 25: see PARA 338.

10 Gambling Act 2005 Sch 14 para 8(3)(b). As to the Gambling Commission see PARA 4.

11 As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

12 As to the meaning of 'the premises' see PARA 592 note 11; as to the meaning of 'premises' generally see PARA 311 note 5; and see also Sch 14 para 24, cited in PARA 592.

13 Gambling Act 2005 Sch 14 para 10.

14 Gambling Act 2005 Sch 14 para 9(3).

15 As to the method of notification see PARA 356 note 5.

16 Gambling Act 2005 Sch 14 para 11(1)(a).

17 See the Gambling Act 2005 Sch 14 para 11(1)(b), (2).

18 Gambling Act 2005 Sch 14 para 9(4).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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595. Duration of permit.

A prize gaming permit¹ ('a permit') ceases to have effect at the end of the period of ten years beginning with the specified date² unless it ceases to have effect before that time in accordance with a relevant statutory provision³ or it is renewed⁴.

A permit lapses if the holder⁵ ceases to occupy the specified premises⁶; and it does not take effect if on the specified date⁷ the person to whom the permit is issued is not an occupier of the specified premises⁸.

A permit held by an individual lapses if:

- 2060 (1) he dies;
- 2061 (2) he becomes, in the opinion of the licensing authority⁹ as notified¹⁰ to the individual, incapable of carrying on the activities authorised by the permit by reason of mental or physical incapacity;
- 2062 (3) he becomes bankrupt¹¹; or
- 2063 (4) in Scotland, sequestration of his estate¹² is awarded¹³.

In any other case a permit lapses if the holder ceases to exist, or goes into liquidation¹⁴. During the period of six months beginning with the date on which a permit lapses under heads (1) to (4) above, or because the holder has ceased to exist or has gone into liquidation¹⁵, however, the following may rely on it as if it had effect and were issued to them:

- 2064 (a) the personal representatives of the holder, in the case of an individual holder who dies;
- 2065 (b) the trustee of the bankrupt's estate, in the case of an individual holder who becomes bankrupt;
- 2066 (c) the holder's interim or permanent trustee, in the case of an individual holder whose estate is sequestrated; and
- 2067 (d) the liquidator of the company, in the case of a company holder that goes into liquidation¹⁶.

A permit ceases to have effect if the holder gives notice of surrender to the licensing authority, and gives the authority either the permit, or a statement explaining why it is not reasonably practicable to produce the permit¹⁷.

Where the holder of a permit is convicted of a relevant offence¹⁸ the court by or before which he is convicted may order forfeiture of the permit¹⁹. Such forfeiture must be on such terms, which may include terms as to suspension, as may be specified by:

- 2068 (i) the court which orders forfeiture;
- 2069 (ii) a court to which an appeal against the conviction, or against any order made on the conviction, has been or could be made; or
- 2070 (iii) the High Court, if hearing proceedings relating to the conviction²⁰.

The terms on which forfeiture is so ordered must, in particular, include a requirement that the holder of the permit deliver to the licensing authority within such time as the order may specify

either the permit, or a statement explaining why it is not reasonably practicable to produce the permit²¹. As soon as is reasonably practicable after making or suspending such an order for forfeiture a court must notify the licensing authority²². Subject to any express provision made under heads (i) to (iii) above, a permit ceases to have effect on the making of a forfeiture order under these provisions²³.

- 1 As to the meaning of 'prize gaming permit' see PARA 592.
- 2 Ie the date specified under the Gambling Act 2005 Sch 14 para 12(1)(d): see PARA 592.
- 3 Ie a provision of the Gambling Act 2005 Sch 14: see PARAS 592-594; and the text and notes 4-23; and PARA 596 et seq.
- 4 Gambling Act 2005 Sch 14 para 13. As to renewal of a permit see Sch 14 para 18; and PARA 597.
- 5 'Holder', in relation to a permit, means the person to whom the permit is issued: Sch 14 para 1.
- 6 Gambling Act 2005 Sch 14 para 14(1). The reference in the text to the specified premises is to the premises specified under Sch 14 para 12(1)(c): see PARA 592. As to the meaning of 'the premises' see PARA 592 note 11; as to the meaning of 'premises' generally see PARA 311 note 5; and see also Sch 14 para 24, cited in PARA 592.
- 7 See note 2.
- 8 Gambling Act 2005 Sch 14 para 14(2); and see note 6.
- 9 As to the meaning of 'the licensing authority' see PARA 593 note 9; as to the licensing authorities see PARA 3; as to the delegation of functions to licensing committees and sub-committees see PARA 594 note 2; and as to the matters to which a licensing authority must have regard in carrying out its functions see PARA 594 text and notes 5-10.
- 10 As to the method of notification see PARA 356 note 5.
- 11 Ie within the meaning of the Insolvency Act 1986 s 381: see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 84.
- 12 Ie under the Bankruptcy (Scotland) Act 1985 s 12(1).
- 13 Gambling Act 2005 Sch 14 para 15(1).
- 14 Gambling Act 2005 Sch 14 para 15(1). The reference in the text to going into liquidation is a reference to going into liquidation within the meaning of the Insolvency Act 1986 s 247(2): see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 9.
- 15 Ie lapses under the Gambling Act 2005 Sch 14 para 15.
- 16 See the Gambling Act 2005 Sch 14 para 15(3).
- 17 See the Gambling Act 2005 Sch 14 para 16.
- 18 As to the meaning of 'relevant offence' see PARA 353 note 11.
- 19 Gambling Act 2005 Sch 14 para 17(1).
- 20 Gambling Act 2005 Sch 14 para 17(2).
- 21 Gambling Act 2005 Sch 14 para 17(4).
- 22 Gambling Act 2005 Sch 14 para 17(5).
- 23 Gambling Act 2005 Sch 14 para 17(3).

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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596. Maintenance of permit.

The holder¹ of a prize gaming permit² ('a permit') must keep it on the premises³. An occupier of premises in respect of which a permit has effect commits an offence if without reasonable excuse he fails to produce the permit on request for inspection by a constable⁴, or by an enforcement officer⁵ or an authorised local authority officer⁶.

If the person to whom a permit is issued changes his name or wishes to be known by another name, he may send the permit to the licensing authority⁷ with the prescribed fee⁸ and with a request that a new name be substituted for the old name⁹. The licensing authority must comply with the request and return the permit to the holder¹⁰.

Where a permit is lost, stolen or damaged, the holder may apply to the licensing authority for a copy¹¹. Such an application must be accompanied by the prescribed fee¹². A licensing authority must consider such an application and must grant it if the authority is satisfied that the permit has been lost, stolen or damaged, and that where the permit has been lost or stolen, the loss or theft has been reported to the police¹³. As soon as is reasonably practicable after granting such an application a licensing authority must issue a copy of the permit certified by the authority as a true copy¹⁴. A copy of a permit so issued is to be treated as if it were the permit¹⁵.

1 As to the meaning of 'holder' see PARA 595 note 5.

2 As to the meaning of 'prize gaming permit' see PARA 592.

3 Gambling Act 2005 Sch 14 para 19. As to the meaning of 'the premises' see PARA 592 note 11; as to the meaning of 'premises' generally see PARA 311 note 5; and see also Sch 14 para 24, cited in PARA 592.

4 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

5 As to the meaning of 'enforcement officer' see PARA 342 note 7.

6 Gambling Act 2005 Sch 14 para 20(1). As to the meaning of 'authorised local authority officer' see PARA 517 note 6. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: Gambling Act 2005 Sch 14 para 20(2). As to the standard scale see PARA 17 note 21. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684. A licensing authority may institute criminal proceedings in respect of such an offence: see s 346(1)(o); and PARA 345.

7 As to the meaning of 'the licensing authority' see PARA 593 note 9; as to the licensing authorities see PARA 3; as to the delegation of functions to licensing committees and sub-committees see PARA 594 note 2; and as to the matters to which a licensing authority must have regard in carrying out its functions see PARA 594 text and notes 5-10.

8 As to the meaning of 'prescribed' see PARA 592 note 10. The fee to be sent with a request that a new name be substituted for the old name specified on a permit is £25: Gambling Act 2005 (Prize Gaming) (Permits) Regulations 2007, SI 2007/455, reg 5.

9 Gambling Act 2005 Sch 14 para 12(2)(a).

10 Gambling Act 2005 Sch 14 para 12(2)(b).

11 Gambling Act 2005 Sch 14 para 21(1).

12 Gambling Act 2005 Sch 14 para 21(2). The fee to accompany an application for a copy of a permit is £15: Gambling Act 2005 (Prize Gaming) (Permits) Regulations 2007, SI 2007/455, reg 6.

13 Gambling Act 2005 Sch 14 para 21(3).

14 Gambling Act 2005 Sch 14 para 21(4).

15 Gambling Act 2005 Sch 14 para 21(5).

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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597. Renewal of permit.

The holder¹ of a prize gaming permit² ('a permit') may apply to the licensing authority³ for renewal of the permit⁴. The application must be accompanied by the prescribed fee⁵. An application for renewal may not be made before the period of six months ending with the date on which the permit would otherwise expire⁶, or after the beginning of the period of two months ending with that date⁷.

A renewed permit ceases to have effect at the end of the period of ten years beginning with the date of renewal⁸ unless it is once more renewed⁹.

A permit does not cease to have effect by virtue only of its expiry¹⁰ while an application for renewal of the permit is pending, or an appeal¹¹ against a decision on an application for renewal of the permit is pending¹².

1 As to the meaning of 'holder' see PARA 595 note 5.

2 As to the meaning of 'prize gaming permit' see PARA 592.

3 As to the meaning of 'the licensing authority' see PARA 593 note 9; as to the licensing authorities see PARA 3; as to the delegation of functions to licensing committees and sub-committees see PARA 594 note 2; and as to the matters to which a licensing authority must have regard in carrying out its functions see PARA 594 text and notes 5-10.

4 Gambling Act 2005 Sch 14 para 18(1). The provisions of Sch 14 (see PARAS 592-596, 598-599) have effect (with any necessary modifications) in relation to an application for renewal as they have effect in relation to an application for a permit: Sch 14 para 18(3).

5 Gambling Act 2005 Sch 14 para 6(e) (as applied: see note 4). As to the meaning of 'prescribed' see PARA 592 note 10. The fee to accompany an application for renewal of a permit is £300: Gambling Act 2005 (Prize Gaming) (Permits) Regulations 2007, SI 2007/455, reg 3(c).

6 Ie in accordance with the Gambling Act 2005 Sch 14 para 13: see PARA 595.

7 Gambling Act 2005 Sch 14 para 18(2).

8 The Gambling Act 2005 Sch 14 para 13 (see PARA 595) has effect in relation to a renewed permit as if the date of renewal were the date specified under Sch 14 para 12(1)(d) (see PARA 592): Sch 14 para 18(4).

9 See note 8.

10 Ie by virtue only of the Gambling Act 2005 Sch 14 para 13: see PARA 595.

11 As to appeals see PARA 598.

12 Gambling Act 2005 Sch 14 para 18(5).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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598. Appeals.

Where a licensing authority¹ rejects an application for the issue or renewal of a prize gaming permit² ('a permit'), the applicant may appeal³. Such an appeal must be instituted:

- 2071 (1) in the magistrates' court for a local justice area in which the premises⁴ to which the appeal relates are wholly or partly situated;
- 2072 (2) by notice of appeal given to the designated officer; and
- 2073 (3) within the period of 21 days beginning with the day on which the appellant receives notice of the decision against which the appeal is brought⁵.

On such an appeal a magistrates' court may:

- 2074 (a) dismiss the appeal;
- 2075 (b) substitute for the decision appealed against any decision that the licensing authority could have made;
- 2076 (c) remit the case to the licensing authority to decide in accordance with a direction of the court⁶;
- 2077 (d) make an order about costs⁷.

1 As to the licensing authorities see PARA 3; as to the delegation of functions to licensing committees and sub-committees see PARA 594 note 2; and as to the matters to which a licensing authority must have regard in carrying out its functions see PARA 594 text and notes 5-10.

2 As to the meaning of 'prize gaming permit' see PARA 592.

3 Gambling Act 2005 Sch 14 para 22(1).

4 As to the meaning of 'the premises' see PARA 592 note 11; as to the meaning of 'premises' generally see PARA 311 note 5; and see also Sch 14 para 24, cited in PARA 592.

5 Gambling Act 2005 Sch 14 para 22(2).

6 The Gambling Act 2005 Sch 14 para 22(1) (rights of appeal: see the text and notes 1-3) applies to a decision of a licensing authority following remittal under Sch 14 para 22(3)(c) (see head (c) in the text: Gambling Act 2005 Sch 14 para 22(4)).

7 Gambling Act 2005 Sch 14 para 22(3).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(9) PRIZE GAMING PERMITS/599. Register of permits.

599. Register of permits.

A licensing authority¹ must:

- 2078 (1) maintain a register of prize gaming permits² ('permits') issued by the authority together with such other information as may be prescribed³;
- 2079 (2) make the register and information available for inspection by members of the public at all reasonable times; and
- 2080 (3) make arrangements for the provision of a copy of an entry in the register, or of information, to a member of the public on request⁴.

A licensing authority may, however, refuse to provide a copy of an entry or of information unless the person seeking it pays a reasonable fee specified by the authority⁵.

The Secretary of State⁶ may make regulations about the form of the register and the manner in which it is maintained⁷. He may also make regulations:

- 2081 (a) requiring licensing authorities to give to the Gambling Commission⁸ specified information about permits issued by them;
- 2082 (b) requiring the Commission to maintain a register of the information provided to it under head (a) above;
- 2083 (c) requiring the Commission to grant access to the register to members of the public, without charge;
- 2084 (d) requiring the Commission to make copies of entries available on request, and on payment of a reasonable fee, to members of the public;
- 2085 (e) excusing licensing authorities, wholly or partly, from compliance with heads (1) to (3) above⁹.

1 As to the licensing authorities see PARA 3; as to the delegation of functions to licensing committees and sub-committees see PARA 594 note 2; and as to the matters to which a licensing authority must have regard in carrying out its functions see PARA 594 text and notes 5-10.

2 As to the meaning of 'prize gaming permit' see PARA 592.

3 As to the meaning of 'prescribed' see PARA 592 note 10. At the date at which this volume states the law, no regulations had been made prescribing information for these purposes.

4 Gambling Act 2005 Sch 14 para 23(1).

5 Gambling Act 2005 Sch 14 para 23(2).

6 As to the Secretary of State see PARA 2.

7 Gambling Act 2005 Sch 14 para 23(3). At the date at which this volume states the law, no such regulations had been made.

8 As to the Gambling Commission see PARA 4.

9 Gambling Act 2005 Sch 14 para 23(4). At the date at which this volume states the law, no such regulations had been made.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(10) INSPECTION/(i) Inspectors/600. Enforcement officers.

(10) INSPECTION

(i) Inspectors

600. Enforcement officers.

The Gambling Commission¹ may designate employees of the Commission as enforcement officers for the purposes of the Gambling Act 2005, and may appoint persons other than employees of the Commission as enforcement officers for those purposes². The Commission may pay to or in respect of an enforcement officer who is not an employee of the Commission sums by way of or in respect of remuneration, allowances, expenses, pension and gratuity³.

1 As to the Gambling Commission see PARA 4.

2 Gambling Act 2005 s 303(1). In June 2007 the Gambling Commission issued a policy statement on compliance and enforcement: see *Compliance and Enforcement Policy Statement* (June 2007, Gambling Commission), set out in Paterson's Licensing Acts (116th Edn, 2008) at para 3.2075. That statement is also published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk.

3 Gambling Act 2005 s 303(2).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(10) INSPECTION/(i) Inspectors/601. Authorised persons.

601. Authorised persons.

An officer of a licensing authority¹ is an authorised person for a purpose relating to premises² if the premises are wholly or partly situated in the authority's area, and the officer is designated by the authority³ as an authorised person for the statutory purposes⁴.

An officer of an authority other than a licensing authority is an authorised person for a purpose relating to premises if:

- 2086 (1) the authority has statutory functions, for an area in which the premises are wholly or partly situated, in relation to minimising or preventing the risk of pollution of the environment or of harm to human health; and
- 2087 (2) the officer is authorised by the authority for the purpose of exercising any of those statutory functions⁵.

The following are authorised persons for purposes relating to any premises:

- 2088 (a) an inspector appointed under the Regulatory Reform (Fire Safety) Order 2005⁶;
- 2089 (b) an inspector appointed under the Health and Safety at Work etc Act 1974⁷;
- 2090 (c) an inspector or surveyor of ships appointed under the Merchant Shipping Act 1995⁸;
- 2091 (d) a person who is within a class prescribed by the Secretary of State⁹ by regulations¹⁰.

1 As to the licensing authorities see PARA 3.

2 As to the meaning of 'premises' see PARA 311 note 5.

3 Ie for the purposes of the Gambling Act 2005 s 304: see the text and notes 4-9.

4 Gambling Act 2005 s 304(1), (2). Such a person is referred to as an 'authorised local authority officer': see s 304(1)(b).

5 Gambling Act 2005 s 304(1), (3).

6 The statutory reference is to an inspector appointed under the Fire Precautions Act 1971 s 18 (enforcement), but s 18 was repealed by SI 2005/1541. As to inspectors for the purposes of fire safety see the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, Pt 3 (arts 25-31); and **FIRE SERVICES**.

7 Ie under the Health and Safety at Work etc Act 1974 s 19: see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 375.

8 Ie under the Merchant Shipping Act 1995 s 256: see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46.

9 As to the Secretary of State see PARA 2.

10 Gambling Act 2005 s 304(1), (4). At the date at which this volume states the law, no such regulations had been made.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(10) INSPECTION/(ii) Kinds of Inspection/A. IN GENERAL/602. Inspections; in general.

(ii) Kinds of Inspection

A. IN GENERAL

602. Inspections; in general.

A constable¹, enforcement officer² or authorised person³ may undertake activities for the purpose of assessing compliance with provision made by or by virtue of the Gambling Act 2005 and whether an offence is being committed under or by virtue of that Act⁴.

A constable or enforcement officer may enter premises⁵ if he reasonably suspects that an offence under the Gambling Act 2005 Act may be being committed on the premises, or may be about to be committed on the premises⁶. A justice of the peace may on the application of a constable or enforcement officer issue a warrant authorising a constable or enforcement officer to enter premises if the justice of the peace is satisfied:

- 2092 (1) that there are reasonable grounds for suspecting that an offence under that Act has been committed on the premises;
- 2093 (2) that there are reasonable grounds for suspecting that evidence of the commission of the offence may be found on the premises; and
- 2094 (3) that at least one of the following conditions is satisfied⁷, namely that:
 - 145 225. (a) admission to the premises has been refused⁸;
 - 226. (b) admission to the premises is likely to be refused unless a warrant is produced⁹;
 - 227. (c) the purpose of entry may be frustrated or seriously prejudiced unless a constable or enforcement officer arriving at the premises can secure immediate entry¹⁰; and
 - 228. (d) there is likely to be nobody at the premises capable of granting admission¹¹.
- 146

Such a warrant ceases to have effect at the end of the period of 28 days beginning with the day of issue¹².

A constable, enforcement officer or authorised person may enter premises for a purpose specified in heads (i) to (iii) below, if he reasonably suspects that facilities for gambling¹³ other than private and non-commercial gaming¹⁴ or betting¹⁵ may be being provided, may be about to be provided or have been provided, on the premises¹⁶. The specified purposes are:

- 2095 (i) to discover whether facilities for gambling other than private and non-commercial gaming or betting are being provided, are about to be provided or have been provided on the premises;
- 2096 (ii) to determine whether an operating licence¹⁷ or premises licence¹⁸ is held in respect of the provision of facilities for gambling on the premises; and

2097 (iii) to determine whether facilities are being, will be or have been provided in accordance with the terms and conditions of an operating licence or premises licence¹⁹.

- 1 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.
- 2 As to enforcement officers see PARA 600.
- 3 As to authorised persons see PARA 601.
- 4 Gambling Act 2005 s 305. As to offences under the Gambling Act 2005 see PARA 615 et seq.
- 5 As to the meaning of 'premises' see PARA 311 note 5.
- 6 Gambling Act 2005 s 306(1).
- 7 Gambling Act 2005 s 306(2).
- 8 Gambling Act 2005 s 306(3)(a). A warrant may be granted in reliance on s 306(3)(a) or (b) only if the justice of the peace is satisfied (1) that notice has been given to a person occupying the premises, or having responsibility for their management, of intent to apply for a warrant; or (2) that the purpose of entry may be frustrated or seriously prejudiced by the giving of notice under head (1) above: s 306(4).
- 9 Gambling Act 2005 s 306(3)(b); and see note 8.
- 10 Gambling Act 2005 s 306(3)(c).
- 11 Gambling Act 2005 s 306(3)(d).
- 12 Gambling Act 2005 s 306(5).
- 13 As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.
- 14 As to the meaning of 'gaming' see PARA 310; as to the meaning of 'private gaming' see PARA 648; and as to the meaning of 'non-commercial gaming' see PARA 651.
- 15 As to the meaning of 'betting' see PARA 312; and as to the meaning of 'private betting' see PARA 649. For the purposes of the Gambling Act 2005, a betting transaction is non-commercial betting if no party to the transaction enters it in the course of a business, or holds himself out as being in business in relation to the acceptance of bets: Gambling Act 2005 s 302. As to the meaning of 'accepting a bet' see PARA 312 note 2.
- 16 Gambling Act 2005 s 307(1), (2).
- 17 As to the meaning of 'operating licence' see PARA 349 note 2.
- 18 As to the meaning of 'premises licence' see PARA 460 note 1.
- 19 Gambling Act 2005 s 307(3).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(10) INSPECTION/(ii) Kinds of Inspection/B. SPECIFIC TYPES OF INSPECTION/603. Inspection of premises used by holder of operating licence.

B. SPECIFIC TYPES OF INSPECTION

603. Inspection of premises used by holder of operating licence.

A constable¹ or enforcement officer² may enter premises³ which he reasonably believes to be used by the holder⁴ of an operating licence⁵ wholly or partly for purposes connected with the licensed activities⁶, for the purpose of determining whether the licensed activities are being carried on in accordance with the terms and conditions of the operating licence⁷.

- 1 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.
- 2 As to enforcement officers see PARA 600.
- 3 As to the meaning of 'premises' see PARA 311 note 5.
- 4 As to the meaning of 'holder' in relation to an operating licence see PARA 350 note 5.
- 5 As to the meaning of 'operating licence' see PARA 349 note 2.
- 6 As to the meaning of 'the licensed activities' in relation to an operating licence see PARA 354 note 3.
- 7 See the Gambling Act 2005 s 308(1)-(3).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(10) INSPECTION/(ii) Kinds of Inspection/B. SPECIFIC TYPES OF INSPECTION/604. Inspection of family entertainment centres.

604. Inspection of family entertainment centres.

A constable¹, enforcement officer² or authorised local authority officer³ may enter premises⁴ in respect of which:

- 2098 (1) an application has been made for a family entertainment centre gaming machine permit⁵, for a purpose connected with the consideration of the application⁶;
- 2099 (2) a family entertainment centre gaming machine permit has effect, for the purpose of determining whether the gaming machines⁷ used on the premises, and the arrangements for their use, comply with the requirements of the Gambling Act 2005 and regulations under it⁸.

1 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

2 As to enforcement officers see PARA 600.

3 As to the meaning of 'authorised local authority officer' see PARAS 517 note 6, 601.

4 As to the meaning of 'premises' see PARA 311 note 5.

5 As to the meaning of 'family entertainment centre gaming machine permit' see PARA 562.

6 Gambling Act 2005 s 309(1).

7 As to the meaning of 'gaming machine' see PARA 547.

8 Gambling Act 2005 s 309(2).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(10) INSPECTION/(ii) Kinds of Inspection/B. SPECIFIC TYPES OF INSPECTION/605. Inspection of premises licensed for alcohol.

605. Inspection of premises licensed for alcohol.

An enforcement officer¹ or an authorised local authority officer² may enter premises³ in respect of which an application has been made for or in connection with a licensed premises gaming machine permit⁴, for a purpose connected with the consideration of the application⁵; and a constable⁶, enforcement officer or authorised local authority officer may enter premises in respect of which an on-premises alcohol licence⁷ has effect for the purpose of:

- 2100 (1) determining whether gaming⁸ carried on satisfies the conditions for exemption⁹;
- 2101 (2) in the case of bingo¹⁰ played on the premises, determining whether the terms and conditions of any relevant operating licence¹¹ are being complied with, determining whether the bingo is high-turnover bingo¹²; and
- 2102 (3) ascertaining the number and category of gaming machines¹³ being made available for use on the premises¹⁴.

1 As to enforcement officers see PARA 600.

2 As to the meaning of 'authorised local authority officer' see PARAS 517 note 6, 601.

3 As to the meaning of 'premises' see PARA 311 note 5.

4 I.e. an application under the Gambling Act 2005 Sch 13: see PARA 571 et seq. As to the meaning of 'licensed premises gaming machine permit' see PARA 570.

5 Gambling Act 2005 s 310(1).

6 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

7 As to the meaning of 'on-premises alcohol licence' see PARA 570 note 7.

8 As to the meaning of 'gaming' see PARA 310.

9 I.e. the conditions in the Gambling Act 2005 s 279: see PARA 668.

10 As to the meaning of 'bingo' see PARA 349 note 8.

11 As to the meaning of 'operating licence' see PARA 349 note 2.

12 I.e. whether the Gambling Act 2005 s 281 (see PARA 668) applies.

13 As to the meaning of 'gaming machine' see PARA 547; and as to categories of gaming machine see PARAS 548-552.

14 Gambling Act 2005 s 310(2).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(10) INSPECTION/(ii) Kinds of Inspection/B. SPECIFIC TYPES OF INSPECTION/606. Inspection with regard to prize gaming permit.

606. Inspection with regard to prize gaming permit.

A constable¹, enforcement officer² or authorised local authority officer³ may enter premises⁴ in respect of which an application has been made for a prize gaming permit⁵ for a purpose connected with the consideration of the application⁶; and may enter premises in respect of which a prize gaming permit has effect for the purposes of determining whether prize gaming⁷ on the premises complies with the requirements of the Gambling Act 2005 and regulations under it⁸.

1 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

2 As to enforcement officers see PARA 600.

3 As to the meaning of 'authorised local authority officer' see PARAS 517 note 6, 601.

4 As to the meaning of 'premises' see PARA 311 note 5.

5 As to the meaning of 'prize gaming permit' see PARA 592.

6 Gambling Act 2005 s 311(1).

7 As to the meaning of 'prize gaming' see PARA 592.

8 Gambling Act 2005 s 311(2).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(10) INSPECTION/(ii) Kinds of Inspection/B. SPECIFIC TYPES OF INSPECTION/607. Inspection of clubs etc.

607. Inspection of clubs etc.

A constable¹ or enforcement officer² may enter premises³ which he reasonably believes to be used by a members' club⁴, a commercial club⁵ or a miners' welfare institute⁶, for a purpose specified in heads (1) and (2) below⁷. The specified purposes are:

2103 (1) to determine whether gaming⁸ is taking place on the premises or is about to take place on the premises;

2104 (2) to determine whether any gaming that is taking place or is about to take place on the premises is in accordance with the statutory conditions for exempt gaming⁹ or in accordance with a club gaming permit¹⁰ or a club machine permit¹¹.

An authorised local authority officer¹² may enter premises in respect of which an application has been made for a club gaming permit or a club machine permit for a purpose connected with the consideration of the application¹³.

1 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

2 As to enforcement officers see PARA 600.

3 As to the meaning of 'premises' see PARA 311 note 5.

4 As to the meaning of 'members' club' see PARA 578.

5 As to the meaning of 'commercial club' see PARA 579.

6 As to the meaning of 'miners' welfare institute' see PARA 580.

7 Gambling Act 2005 s 312(1), (2).

8 As to the meaning of 'gaming' see PARA 310.

9 ie in accordance with the Gambling Act 2005 s 269: see PARA 665.

10 As to the meaning of 'club gaming permit' see PARA 581.

11 Gambling Act 2005 s 312(3). As to the meaning of 'club machine permit' see PARA 582.

12 As to the meaning of 'authorised local authority officer' see PARAS 517 note 6, 601.

13 Gambling Act 2005 s 312(4).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(10) INSPECTION/(ii) Kinds of Inspection/B. SPECIFIC TYPES OF INSPECTION/608. Inspection of premises licensed under the Gambling Act 2005.

608. Inspection of premises licensed under the Gambling Act 2005.

A constable¹, enforcement officer² or authorised person³ may enter premises⁴ in respect of which:

- 2105 (1) an application for a premises licence⁵ has been made to assess, having regard to the licensing objectives⁶, the likely effects of activity carried on in reliance on the premises licence⁷;
- 2106 (2) a premises licence has effect, for a purpose connected with a review⁸ of that licence⁹.

1 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

2 As to enforcement officers see PARA 600.

3 As to authorised persons see PARA 601.

4 As to the meaning of 'premises' see PARA 311 note 5.

5 As to the meaning of 'premises licence' see PARA 460 note 1.

6 As to the licensing objectives see PARA 331.

7 Gambling Act 2005 s 313(1).

8 Ie a review under the Gambling Act 2005 s 201: see PARA 530.

9 Gambling Act 2005 s 313(2).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(10) INSPECTION/(ii) Kinds of Inspection/B. SPECIFIC TYPES OF INSPECTION/609. Inspection of premises owned or used by registered society.

609. Inspection of premises owned or used by registered society.

Where a society¹ is registered with a local authority², an enforcement officer³ or an authorised local authority officer⁴ may enter premises⁵ owned or used by the society for the purpose of making inquiries in connection with a lottery⁶ promoted⁷ on behalf of the society⁸.

- 1 As to the meaning of 'society' see PARA 377 note 2.
- 2 Ie in accordance with the Gambling Act 2005 Sch 11 Pt 5 (paras 41-56); see PARA 663.
- 3 As to enforcement officers see PARA 600.
- 4 As to the meaning of 'authorised local authority officer' see PARAS 517 note 6, 601.
- 5 As to the meaning of 'premises' see PARA 311 note 5.
- 6 As to the meaning of 'lottery' see PARA 317.
- 7 As to the meaning of 'promoting a lottery' see PARA 349 note 20.
- 8 Gambling Act 2005 s 314.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(10) INSPECTION/(ii) Kinds of Inspection/B. SPECIFIC TYPES OF INSPECTION/610. Inspection of premises to which temporary use notice applies.

610. Inspection of premises to which temporary use notice applies.

A constable¹, enforcement officer² or authorised person³ may enter premises⁴ in respect of which a temporary use notice⁵:

- 2107 (1) has been given, to assess, having regard to the licensing objectives⁶, the likely effects of activity carried on in reliance on the temporary use notice⁷;
- 2108 (2) has effect, to determine whether an activity of a specified kind⁸ is being carried on otherwise than in accordance with the temporary use notice⁹.

1 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

2 As to enforcement officers see PARA 600.

3 As to authorised persons see PARA 601.

4 As to the meaning of 'premises' see PARA 311 note 5.

5 As to the meaning of 'temporary use notice' see PARA 535.

6 As to the licensing objectives see PARA 331.

7 Gambling Act 2005 s 315(1).

8 I.e. an activity of a kind listed in the Gambling Act 2005 s 37(1): see PARA 616.

9 Gambling Act 2005 s 315(2).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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611. Powers to require production of certain authorisations.

A constable¹ or enforcement officer²:

- 2109 (1) may require the holder³ of an operating licence⁴ to produce to the constable or enforcement officer within a specified period a copy of any authorisation given⁵ by the holder of the licence with regard to pool betting⁶;
- 2110 (2) may, while a person is holding himself out as willing to accept bets⁷ on behalf of the holder of an operating licence in accordance with an authorisation such as is described in head (1) above⁸, require the person to produce a copy of his authorisation either within a specified period, or immediately⁹;
- 2111 (3) may require the holder¹⁰ of a casino premises licence¹¹ to produce to the constable or enforcement officer within a specified period a copy of any authorisation given¹² by the holder of the licence to a person to use the premises for bingo¹³, betting, or both bingo and betting¹⁴;
- 2112 (4) may, while a person is carrying on an activity in reliance on an authorisation such as is described in head (3) above¹⁵, require the person to produce a copy of his authorisation either within a specified period, or immediately¹⁶.

A person commits an offence if he fails without reasonable excuse to comply with a requirement imposed under heads (1) to (4) above¹⁷.

- 1 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.
- 2 As to enforcement officers see PARA 600.
- 3 As to the meaning of 'holder' in relation to an operating licence see PARA 350 note 5.
- 4 As to the meaning of 'operating licence' see PARA 349 note 2.
- 5 Ie an authorisation under the Gambling Act 2005 s 93(2) or (3) (see PARA 372) or s 94(2) (see PARA 373).
- 6 See the Gambling Act 2005 s 316(1).
- 7 As to the meaning of 'bet' see PARA 312; and as to the meaning of 'accepting a bet' see PARA 312 note 2.
- 8 See note 5.
- 9 Gambling Act 2005 s 316(2).
- 10 As to the meaning of 'holder' in relation to a premises licence see PARA 486 note 10.
- 11 As to the meaning of 'casino premises licence' see PARA 460 at head (1).
- 12 Ie an authorisation under the Gambling Act 2005 s 174(3); see PARA 505.
- 13 As to the meaning of 'bingo' see PARA 349 note 8.
- 14 See the Gambling Act 2005 s 316(3).
- 15 See note 12.

16 Gambling Act 2005 s 316(4).

17 Gambling Act 2005 s 316(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 316(6). As to the standard scale see PARA 17 note 21.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(10) INSPECTION/(iii) Exercise of Powers/612. Exercise of powers of entry; in general.

(iii) Exercise of Powers

612. Exercise of powers of entry; in general.

A constable¹, enforcement officer² or authorised person³ exercising a statutory power⁴ to enter premises⁵ may:

- 2113 (1) take one or more persons with him⁶;
- 2114 (2) inspect any part of the premises and any machine or other thing on the premises⁷;
- 2115 (3) question any person on the premises⁸;
- 2116 (4) require access to any written or electronic record which is kept on the premises⁹;
- 2117 (5) require to be supplied with a copy, in such form as he directs, of an entry in a written or electronic record which is kept on the premises¹⁰;
- 2118 (6) remove and retain anything if he reasonably believes that it constitutes or contains evidence of the commission of an offence under the Gambling Act 2005, or the breach of a term or condition of a licence issued under that Act¹¹;
- 2119 (7) remove and retain anything if he reasonably believes that it is being used or has been used in the commission of an offence under that Act¹².

Nothing in the relevant statutory provisions¹³, however, authorises action to be taken in England and Wales in respect of the following materials¹⁴, namely items subject to legal privilege¹⁵, excluded material¹⁶ or special procedure material consisting of documents or records other than documents¹⁷.

A person exercising a power of entry and inspection¹⁸ must have regard to any relevant provision of a code of practice under the Gambling Act 2005¹⁹. An enforcement officer or authorised person seeking to exercise such a power must produce evidence of his identity and authority to a person, if there is one, who appears to the enforcement officer or authorised person to be occupying the relevant premises or to have responsibility for their management²⁰.

The Secretary of State may by regulations make provision about the procedure to be followed in the exercise of a power under heads (2) to (7) above²¹.

A constable may use reasonable force for the purpose of entering premises in pursuance of a power²² of entry and inspection²³; an enforcement officer may use reasonable force for the purpose of entering premises in pursuance of a power of entry²⁴ where he suspects that an offence under the Gambling Act 2005 has been or is about to be committed on those premises²⁵; and an enforcement officer or an authorised person may use reasonable force for the purpose of entering premises in pursuance of a power²⁶ for the inspection of gambling²⁷.

A person who enters premises in reliance on a power of entry and inspection²⁸ must take reasonable steps to ensure that when he leaves the premises they are as secure as they were before he entered²⁹.

¹ As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

- 2 As to enforcement officers see PARA 600.
- 3 As to authorised persons see PARA 601.
- 4 Ie a power under or by virtue of the Gambling Act 2005 Pt 15 (ss 303-326): see PARAS 600 et seq, 613 et seq. Such a power may be exercised only at a reasonable time: s 320.
- 5 As to the meaning of 'premises' see PARA 311 note 5. As to entry into dwellings see further PARA 614.
- 6 Gambling Act 2005 s 324. Whilst an inspection is taking place, an inspector must ensure that a person who accompanies him pursuant to s 324 produces evidence of his identity to an appropriate recipient, or if there is no appropriate recipient, to a person who works at the premises and is there in his capacity as an employee: Gambling Act 2005 (Inspection) (Provision of Information) Regulations 2007, SI 2007/319, reg 3. 'Inspection' means the entry of an inspector into premises pursuant to a power conferred by the Gambling Act 2005 Pt 15, and the carrying out there of activities authorised under that Part; 'inspector' means a constable, enforcement officer or authorised person; and 'appropriate recipient' means a person present at premises at any time during an inspection, and who appears to the inspector to occupy the premises or to be responsible for their management: Gambling Act 2005 (Inspection) (Provision of Information) Regulations 2007, SI 2007/319, reg 2(1).
- 7 Gambling Act 2005 s 317(1)(a). As to the meaning of 'machine' see PARA 493 note 13.
- 8 Gambling Act 2005 s 317(1)(b). If an inspector questions a person on the premises under s 317(1)(b), and that person refuses to answer the question, the inspector must orally inform the person that he is exercising a power to question under s 317(1)(b) and that it is an offence under s 326 (see PARA 681) if, without reasonable excuse, a person obstructs, or fails to co-operate with, an inspector who is exercising or seeking to exercise a power under or by virtue of Pt 15: Gambling Act 2005 (Inspection) (Provision of Information) Regulations 2007, SI 2007/319, reg 5.
- 9 Gambling Act 2005 s 317(1)(c). A constable, enforcement officer or authorised person exercising a power of entry under or by virtue of Pt 15 may exercise a power under s 317(1)(c)-(e) in relation to records (whether written or electronic) only if the records relate entirely to the matters to which the power of entry relates: s 319(1). A justice of the peace may, however, on the application of a constable, enforcement officer or authorised person issue a warrant disapplying s 319(1) to a specified extent if the justice of the peace is satisfied that the disapplication is necessary: s 319(2). A warrant may be so granted only if the justice of the peace is satisfied: (1) that notice has been given to a person in control of the records of intent to apply for a warrant; or (2) that the purpose of exercising the power of entry may be frustrated or seriously prejudiced by the giving of notice under head (1) above: s 319(3). Such a warrant ceases to have effect at the end of the period of 28 days beginning with the day of issue: s 319(4).
- 10 Gambling Act 2005 s 317(1)(d); and see note 9. The Secretary of State may by regulations make provision about the treatment of copies supplied under s 317(1)(d) (see head (5) in the text), and things removed under s 317(1)(e) or (f) (see heads (6)-(7) in the text): s 317(2). Such regulations may, in particular, make provision (a) about the retention, use, return, disposal or destruction of anything supplied or removed; (b) conferring a right of appeal: s 317(3). As to the Secretary of State see PARA 2. At the date at which this volume states the law, no such regulations had been made. See further, however, s 322; the text and note 8; and PARA 613.
- 11 Gambling Act 2005 s 317(1)(e); and see notes 9-10.
- 12 Gambling Act 2005 s 317(1)(f); and see note 10.
- 13 Ie nothing in the Gambling Act 2005 Pt 15: see PARAS 600 et seq, 613 et seq.
- 14 Ie in respect of anything of a kind specified in the Police and Criminal Evidence Act 1984 s 9(2): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 874.
- 15 As to items subject to legal privilege see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 873.
- 16 As to excluded material see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 875.
- 17 See the Gambling Act 2005 s 317(5). As to special procedure material see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 876.
- 18 See note 4.

- 19 Gambling Act 2005 s 317(6). Guidance under s 25 (see PARA 338) may refer to a provision of a code: s 317(6).
- 20 Gambling Act 2005 s 321.
- 21 Gambling Act 2005 s 317(4). At the date at which this volume states the law, no such regulations had been made. See further, however, s 322; the text and note 8; and PARA 613.
- 22 See note 4.
- 23 Gambling Act 2005 s 323(1).
- 24 Is a power under or by virtue of the Gambling Act 2005 s 306: see PARA 602.
- 25 See the Gambling Act 2005 s 323(2).
- 26 Is a power under the Gambling Act 2005 s 307: see PARA 602.
- 27 See the Gambling Act 2005 s 323(2), (3).
- 28 See note 4.
- 29 Gambling Act 2005 s 325.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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613. Information about powers of entry and inspection and their exercise.

The Secretary of State¹ must make regulations requiring a person who exercises a power of entry and inspection² to provide information about the power and its exercise³; and such regulations must, in particular, make provision about:

- 2120 (1) the information to be provided, which may include ancillary information about a provision of the Gambling Act 2005 or another enactment or about a rule of law⁴;
- 2121 (2) the form and manner in which the information is to be provided⁵;
- 2122 (3) the person to whom, or the place at which, the information is to be provided, which may, in particular, include provision for the supply of a copy if requested by a person within a specified class⁶;
- 2123 (4) timing⁷.

A constable⁸, enforcement officer⁹ or authorised person¹⁰ exercising a power of entry or inspection¹¹ must comply with any relevant provision of such regulations¹².

Where an appropriate recipient¹³ is present at the premises¹⁴ at the start of an inspection, or such a recipient arrives at the premises during the inspection, an inspector¹⁵ carrying out the inspection must communicate to the recipient the prescribed information¹⁶, whether orally or in writing, as soon as reasonably practicable after the start of the inspection or the arrival of the recipient¹⁷, unless that information has already been communicated to an appropriate recipient during the inspection¹⁸. If at no time during an inspection is an appropriate recipient present at the premises, an inspector must leave a written notice on the premises setting out the fact that the premises have been inspected, the name of any inspector who carried out the inspection, the date of the inspection and the prescribed information¹⁹.

If, following an inspection, an interested person²⁰ makes a request in writing for a written record of the inspection, the inspector must, as soon as reasonably practicable after receipt of the request, supply the person with a written record including the prescribed information²¹.

1 As to the Secretary of State see PARA 2.

2 I.e. a power under or by virtue of the Gambling Act 2005 Pt 15 (ss 303-326): see PARAS 600 et seq, 613 et seq. Such a power may be exercised only at a reasonable time: s 320.

3 Gambling Act 2005 s 322(1). In the exercise of this power the Secretary of State has made the Gambling Act 2005 (Inspection) (Provision of Information) Regulations 2007, SI 2007/319, which came into force on 21 May 2007: reg 1. See PARA 612 notes 6, 8; and the text and notes 13-21.

4 Gambling Act 2005 s 322(2)(a).

5 Gambling Act 2005 s 322(2)(b).

6 Gambling Act 2005 s 322(2)(c).

7 Gambling Act 2005 s 322(2)(d).

8 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

9 As to enforcement officers see PARA 600.

10 As to authorised persons see PARA 601.

11 See note 2.

12 Gambling Act 2005 s 322(3).

13 As to the meaning of 'appropriate recipient' see PARA 612 note 6.

14 As to the meaning of 'premises' see PARA 311 note 5.

15 As to the meaning of 'inspector' see PARA 612 note 6.

16 The prescribed information is (1) that anyone who is an interested person in relation to the premises may, following the inspection, make a request in writing for the inspector to provide a written record of the inspection; (2) the manner in which and the person to whom an interested person can make that request; and (3) the persons, or categories of persons, who are interested persons in relation to those premises: Gambling Act 2005 (Inspection) (Provision of Information) Regulations 2007, SI 2007/319, reg 4(2). 'Interested person' in relation to an inspection means any of the following: (a) the Gambling Commission; (b) an appropriate recipient; (c) the holder of a relevant authorisation in relation to the premises; (d) where an inspection occurs pursuant to the Gambling Act 2005 s 315 (which enables an inspector to enter premises in respect of which a temporary use notice has been given: see PARA 610), the person who gave the temporary use notice; (e) a society registered with a local authority in accordance with Sch 11 Pt 5 (paras 41-56) (see PARA 663), where the premises are owned or used by that society at the time of the inspection; (f) a person who occupies the premises or is responsible for their management at the time of the inspection: Gambling Act 2005 (Inspection) (Provision of Information) Regulations 2007, SI 2007/319, reg 2(1). 'Relevant authorisation' in relation to the premises means a premises licence, a permit issued under the Gambling Act 2005 or an on-premises alcohol licence that has effect in relation to the premises at the time the inspection takes place: Gambling Act 2005 (Inspection) (Provision of Information) Regulations 2007, SI 2007/319, reg 2(1). As to the Gambling Commission see PARA 4; as to the meaning of 'temporary use notice' see PARA 535; as to the meaning of 'society' see PARA 377 note 2; as to the meaning of 'premises licence' see PARA 460 note 1; and as to the meaning of 'on-premises alcohol licence' see PARA 570 note 7.

17 Gambling Act 2005 (Inspection) (Provision of Information) Regulations 2007, SI 2007/319, reg 4(1).

18 Gambling Act 2005 (Inspection) (Provision of Information) Regulations 2007, SI 2007/319, reg 4(3).

19 Gambling Act 2005 (Inspection) (Provision of Information) Regulations 2007, SI 2007/319, reg 4(4). As to the prescribed information see note 21.

20 See note 16.

21 Gambling Act 2005 (Inspection) (Provision of Information) Regulations 2007, SI 2007/319, reg 6(1). The prescribed information is, in relation to that inspection: (1) the postal address of the premises; (2) the name of the inspector who visited the premises and the name of any person accompanying him; (3) the date and time when the inspector entered the premises; (4) a description of the power that the inspector exercised to enter the premises, together with a reference to the relevant provision of the Gambling Act 2005; (5) a record of any part of the premises, or any machine or other thing on the premises, that was inspected in exercise of the inspector's power under s 317(1)(a) (see PARA 612 at head (2)); (6) a record of any written or electronic record to which the inspector required access under s 317(1)(c) (see PARA 612 at head (4)); (7) a description of any copies of written or electronic records that were supplied to the inspector in compliance with his request under s 317(1)(d) (see PARA 612 at head (5)), specifying the form in which they were supplied; (8) a record of anything that was removed from the premises and the reasons for its removal; (9) a record of whether any force was used for the purpose of entering the premises, by whom it was used and the reason why it was used; (10) if force was used for the purpose of entering the premises, a record of what steps were taken in accordance with s 325 (see PARA 612), to ensure that when the inspector left the premises they were as secure as they were before he entered; (11) a record of any damage caused during the inspection, and of the circumstances in which it was caused: Gambling Act 2005 (Inspection) (Provision of Information) Regulations 2007, SI 2007/319, reg 6(2).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

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614. Requirement for warrant to enter dwelling.

A statutory power¹ to enter premises² without a warrant does not apply in relation to a dwelling³.

A justice of the peace may, on the application of a constable⁴, enforcement officer⁵ or authorised person⁶, issue a warrant authorising a constable, enforcement officer or authorised person to enter premises if the justice of the peace is satisfied:

- 2124 (1) that, but for the requirement for a warrant⁷, a constable, enforcement officer or authorised person would be able to enter the premises without a warrant in reliance on a relevant statutory provision⁸; and
- 2125 (2) that at least one of the following conditions is satisfied⁹, namely that:.
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- 229. (a) admission to the premises has been refused¹⁰;
- 230. (b) admission to the premises is likely to be refused unless a warrant is produced¹¹;
- 231. (c) the purpose of entry may be frustrated or seriously prejudiced unless a constable, enforcement officer or authorised person arriving at the premises can secure immediate entry¹²; and
- 232. (d) there is likely to be nobody at the premises capable of granting admission¹³.
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Such a warrant ceases to have effect at the end of the period of 28 days beginning with the day of issue¹⁴.

1 Ie a power under the Gambling Act 2005 Pt 15 (ss 303-326): see PARA 600 et seq. Such a power may be exercised only at a reasonable time: s 320.

2 As to the meaning of 'premises' see PARA 311 note 5.

3 Gambling Act 2005 s 318(1).

4 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

5 As to enforcement officers see PARA 600.

6 As to authorised persons see PARA 601.

7 Ie but for the Gambling Act 2005 s 318(1): see the text and notes 1-3.

8 Ie a provision of the Gambling Act 2005 Pt 15.

9 Gambling Act 2005 s 318(2).

10 Gambling Act 2005 s 318(3)(a). A warrant may be granted in reliance on s 318(3)(a) or (b) only if the justice of the peace is satisfied (1) that notice has been given to a person occupying the premises, or having responsibility for their management, of intent to apply for a warrant; or (2) that the purpose of entry may be frustrated or seriously prejudiced by the giving of notice under head (1) above: s 318(4).

- 11 Gambling Act 2005 s 318(3)(b); and see note 10.
- 12 Gambling Act 2005 s 318(3)(c).
- 13 Gambling Act 2005 s 318(3)(d).
- 14 Gambling Act 2005 s 318(5).

UPDATE

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(11) OFFENCES

(i) General Offences

A. UNLAWFUL PROVISION OF FACILITIES OR USE OF PREMISES FOR GAMBLING

615. Provision of facilities for gambling without an operating licence.

A person commits an offence if he provides facilities for gambling¹ unless a statutory exception² applies³. It is immaterial for these purposes whether facilities are provided:

- 2126 (1) wholly or partly by means of remote communication⁴;
- 2127 (2) inside the United Kingdom⁵, outside the United Kingdom, or partly inside and partly outside⁶;

but such an offence is committed⁷:

- 2128 (a) with respect to the provision of facilities for non-remote gambling only if anything done in the course of the provision of the facilities is done in Great Britain⁸; and
- 2129 (b) with respect to the provision of facilities for remote gambling⁹ only if at least one piece of remote gambling equipment¹⁰ used in the provision of the facilities is situated in Great Britain¹¹, whether or not the facilities are provided for use wholly or partly in the United Kingdom¹².

A person does not commit such an offence with regard to any activity¹³ if:

- 2130 (i) he holds an operating licence¹⁴ authorising¹⁵ the activity, and the activity is carried on in accordance with the terms and conditions of the licence¹⁶;
- 2131 (ii) he acts in the course of a business carried on by a person who holds an operating licence authorising the activity, and the activity is carried on in accordance with the terms and conditions of the licence¹⁷.

Other exceptions are provided with regard to:

- 2132 (A) the provision of facilities for a lottery¹⁸;
- 2133 (B) making a gaming machine¹⁹ available for use²⁰;
- 2134 (C) clubs and miners' welfare institutes²¹;
- 2135 (D) premises²² with an alcohol licence²³;
- 2136 (E) prize gaming²⁴;
- 2137 (F) private gaming and betting²⁵; and
- 2138 (G) non-commercial gaming²⁶.

If, once the Horserace Totalisator Board ('the Tote') has been dissolved²⁷, the Gambling Commission²⁸ issues the exclusive licence to the successor company²⁹, a person who acts in contravention of the prohibition on doing anything that the successor company is authorised to do by the exclusive licence, except in accordance with an authorisation by that company³⁰, must be treated as having committed an offence under the above provisions irrespective of whether or not he would otherwise have committed the offence³¹.

1 As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

2 Ie an exception provided for in the Gambling Act 2005 s 33(2), (3) (see heads (i), (ii) in the text) or an exception provided for by any of the provisions referred to in s 33(1)(b)(i)-(vi) (see heads (A)-(F) in the text).

3 Gambling Act 2005 s 33(1). A person guilty of an offence under s 33 is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, a fine not exceeding level 5 on the standard scale, or both: s 33(4). As to the standard scale see PARA 17 note 21. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

Section 33 has effect until immediately before the dissolution date with prescribed modifications: see the Gambling Act 2005 (Horserace Totalisator Board) Order 2007, SI 2007/2102, art 3(1). 'The dissolution date' means the day appointed for the purposes of the Horserace Betting and Olympic Lottery Act 2004 s 1 (not yet in force) (see PARA 9) as the day on which the Tote ceases to exist: Gambling Act 2005 (Horserace Totalisator Board) Order 2007, SI 2007/2102, art 2(2). As to the meaning of 'the Tote' see PARA 328 note 4. The Gambling Act 2005 s 33(1) does not apply to any activity by (1) the Tote in pursuance of the right conferred by the Betting, Gaming and Lotteries Act 1963 s 14 (see PARA 10); or (2) any other person acting in the course of a business carried on by the Tote in pursuance of that right: Gambling Act 2005 (Horserace Totalisator Board) Order 2007, SI 2007/2102, art 3(2). Nor does it apply to any activity which (a) takes place on an approved horse racecourse on a day on which horse races but no other races take place; and (b) is carried out by a person acting in the course of an authorised pool betting business (art 3(3)); or to any activity by a person acting in the course of a sponsored pool betting business (art 3(4)). 'Authorised pool betting business' means a pool betting business carried on, with the authority of the Tote, by the persons having the management of the horse racecourse referred to in head (a) above: art 3(6). As to the meanings of 'approved horse racecourse' and 'pool betting business' see PARA 328 note 4; as to the meaning of 'pool betting' see PARA 313 (definition applied by art 2(2), Table); and as to the Tote and its prospective abolition see PARA 9.

4 As to the meaning of 'remote communication' see PARA 308.

5 As to the meaning of 'United Kingdom' see PARA 16 note 8.

6 Gambling Act 2005 s 36(1).

7 Ie the Gambling Act 2005 s 33 applies.

8 See the Gambling Act 2005 s 36(2).

9 As to the meaning of 'remote gambling' see PARA 308.

10 In the Gambling Act 2005, 'remote gambling equipment' means, subject to s 36(5), electronic or other equipment used by or on behalf of a person providing facilities for remote gambling (1) to store information relating to a person's participation in the gambling; (2) to present, to persons who are participating or may participate in the gambling, a virtual game, virtual race or other virtual event or process by reference to which the gambling is conducted; (3) to determine all or part of a result or of the effect of a result; or (4) to store information relating to a result: s 36(4). 'Remote gambling equipment' does not include equipment which (a) is used by a person to take advantage of remote gambling facilities provided by another person; and (b) is not provided by that other person: s 36(5). In March 2008 the Gambling Commission published a revised advice note on what constitutes remote gambling equipment for these purposes: see *Remote Gambling Equipment* (14 March 2008, Gambling Commission). That advice note is published on the Commission's website, accessible at the date at which this volume states the law at www.gamblingcommission.gov.uk.

11 As to the meaning of 'Great Britain' see PARA 16 note 8.

12 See the Gambling Act 2005 s 36(3).

13 Ie the Gambling Act 2005 s 33(1) (see the text and notes 1-3) does not apply to any activity by a person.

14 As to the meaning of 'operating licence' see PARA 349 note 2.

- 15 As to the meaning of 'authorise' see PARA 349 note 5.
- 16 See the Gambling Act 2005 s 33(2). Section 33 has effect until immediately before the dissolution date with prescribed modifications: see the Gambling Act 2005 (Horserace Totalisator Board) Order 2007, SI 2007/2102, art 3(1). As to the meaning of 'the dissolution date' see note 3. The Gambling Act 2005 s 33(2), (3) does not apply to any activity by a person which infringes the right conferred on the Tote by the Betting, Gaming and Lotteries Act 1963 s 14 (see PARA 10) whether or not those provisions would otherwise apply to the activity: Gambling Act 2005 (Horserace Totalisator Board) Order 2007, SI 2007/2102, art 3(5).
- 17 See the Gambling Act 2005 s 33(3). See also note 16.
- 18 The Gambling Act 2005 s 33 does not apply to the provision of facilities for a lottery: s 34. As to the meaning of 'lottery' see PARA 317.
- 19 As to the meaning of 'gaming machine' see PARA 547.
- 20 The Gambling Act 2005 s 33 does not apply to making a gaming machine available for use: s 35.
- 21 See the Gambling Act 2005 s 269 (exempt gaming); and PARA 665; s 271 (club gaming permits); and PARA 581. As to the meaning of 'miners' welfare institute' see PARA 580.
- 22 As to the meaning of 'premises' see PARA 311 note 5.
- 23 See the Gambling Act 2005 s 279 (exempt gaming); and PARA 668.
- 24 See the Gambling Act 2005 ss 289-292; and PARAS 592, 673-675. As to the meaning of 'prize gaming' see PARA 592.
- 25 See the Gambling Act 2005 s 296; and PARA 650. As to the meaning of 'gaming' see PARA 310; as to the meaning of 'betting' see PARA 312; and as to the meanings of 'private betting' and 'private gaming' see PARAS 648-649.
- 26 See the Gambling Act 2005 s 298; and PARA 652. As to the meaning of 'non-commercial gaming' see PARA 651.
- 27 Ie at any time after the coming into force of the Horserace Betting and Olympic Lottery Act 2004 Pt 1 (ss 1-14) (not fully in force): see PARAS 9-10.
- 28 As to the Gambling Commission see PARA 4.
- 29 Ie under the Horserace Betting and Olympic Lottery Act 2004 s 8 (not yet in force): see PARA 10.
- 30 Ie a person who acts in contravention of the Horserace Betting and Olympic Lottery Act 2004 s 8(5)(b) (not yet in force).
- 31 See the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, art 8(1)(a), (2) (art 8 added by SI 2007/2169).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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616. Use of premises for gambling without a premises licence.

A person commits an offence if he uses premises¹, or causes or permits premises to be used, to:

- 2139 (1) operate a casino²;
- 2140 (2) provide facilities³ for the playing of bingo⁴;
- 2141 (3) make a gaming machine⁵ available for use;
- 2142 (4) provide other facilities for gaming⁶; or
- 2143 (5) provide facilities for betting⁷, whether by making or accepting bets⁸, by acting as a betting intermediary⁹ or by providing other facilities for the making or accepting of bets¹⁰;

but this does not apply in relation to the use of premises by a person if the use is authorised¹¹ by a premises licence¹² held by him¹³. Nor does it apply in relation to the use:

- 2144 (a) of premises by a person if he acts in the course of a business carried on by another person who holds a premises licence authorising the use¹⁴;
- 2145 (b) of a track¹⁵ by a person for accepting bets if the use is authorised by a premises licence, whether or not held by him¹⁶;
- 2146 (c) of a casino for the provision of facilities for bingo or betting in accordance with an authorisation¹⁷ under the relevant statutory provision¹⁸;
- 2147 (d) of premises to provide facilities which are to be used only by persons who are acting in the course of a business, or who are not on the premises¹⁹.

Other exceptions are provided with regard to:

- 2148 (i) occasional use notices with respect to a track²⁰;
- 2149 (ii) football pools²¹;
- 2150 (iii) temporary use notices²²;
- 2151 (iv) gaming machines²³;
- 2152 (v) clubs and miners' welfare institutes²⁴;
- 2153 (vi) premises with alcohol licences²⁵;
- 2154 (vii) travelling fairs²⁶;
- 2155 (viii) prize gaming²⁷;
- 2156 (ix) private gaming and betting²⁸; and
- 2157 (x) non-commercial gaming²⁹.

1 As to the meaning of 'premises' see PARA 311 note 5.

2 As to the meaning of 'casino' see PARA 311.

3 As to the meaning of 'providing facilities' for gambling see PARA 309.

4 As to the meaning of 'bingo' see PARA 349 note 8.

5 As to the meaning of 'gaming machine' see PARA 547.

6 As to the meaning of 'gaming' see PARA 310.

7 As to the meaning of 'betting' see PARA 312.

8 As to the meaning of 'accepting a bet' see PARA 312 note 2.

9 As to the meaning of 'betting intermediary', and as to when a person acts as a betting intermediary, see PARA 315.

10 Gambling Act 2005 s 37(1). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, a fine not exceeding level 5 on the standard scale, or both: s 37(8). As to the standard scale see PARA 17 note 21. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684. A licensing authority may institute criminal proceedings in respect of such an offence: see s 346(1)(a); and PARA 345. As to the licensing authorities see PARA 3.

The Secretary of State may by order amend s 37(1) so as to (1) add a gambling activity; (2) remove a gambling activity; or (3) vary the entry for a gambling activity: s 38(1). For these purposes, 'gambling activity' means an activity that is a kind of gambling, or the provision of facilities for a kind of gambling: s 38(2). In particular, an order under s 37(1) may have the effect of applying s 37(1) to betting of the kind referred to in s 10(1) (spread bets: see PARA 314) subject to any specified exceptions (s 38(3)); and may, in particular, make consequential amendment of (a) s 150 (see PARA 460); (b) another provision of Pt 8 (ss 150-213, Sch 9) (see PARA 460 et seq); (c) any provision of the Gambling Act 2005, or of another enactment, that relates to Pt 8 (s 38(4)). As to the Secretary of State see PARA 2. At the date at which this volume states the law, no such order had been made. As to the meaning of 'gambling' see PARA 308.

11 As to the meaning of 'authorised' see PARA 349 note 5.

12 As to the meaning of 'premises licence' see PARA 460 note 1.

13 Gambling Act 2005 s 37(2).

14 Gambling Act 2005 s 37(3).

15 As to the meaning of 'track' see PARA 372 note 8.

16 Gambling Act 2005 s 37(4).

17 Is an authorisation under the Gambling Act 2005 s 174(3): see PARA 505.

18 Gambling Act 2005 s 37(5).

19 Gambling Act 2005 s 37(6).

20 Gambling Act 2005 s 37(7)(a). A person who accepts bets on a track, or who causes or permits premises to be used for the acceptance of bets, does not commit an offence under the Gambling Act 2005 s 37 if (1) a notice has been given under s 39 in respect of the track; and (2) the activity is carried on in accordance with the notice: s 39(1). A notice under s 39 (an 'occasional use notice') in respect of a track may be given only by a person who is (a) responsible for the administration of events on the track; or (b) an occupier of the track: s 39(2). An occasional use notice must (i) be given in writing to the licensing authority for any area in which the track is wholly or partly situated; and (ii) be copied, in England and Wales, to the chief officer of police for any area in which the track is wholly or partly situated: s 39(3). An occasional use notice must specify a day on which it has effect: s 39(4). An occasional use notice may not be given in respect of a track for a day in a calendar year if eight occasional use notices have been given in respect of that track for days in that year: s 39(5). The Secretary of State may by order amend s 39(5) so as to substitute a different maximum number of occasional use notices for a calendar year: s 39(7). Such an order increasing the maximum number of occasional use notices for a calendar year may also make provision prohibiting the giving of a temporary use notice in a calendar year in respect of premises if a specified number of occasional use notices have been given in respect of the premises in that year: s 39(8). At the date at which this volume states the law, no such order had been made. For these purposes, 'chief officer of police' has the meaning given by the Police Act 1996 s 101(1); and a reference to a chief officer's area is a reference to the area in respect of which he has responsibility under that Act: Gambling Act 2005 s 39(6). As to the chief officer of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

21 Gambling Act 2005 s 37(7)(a). A person does not commit an offence under the Gambling Act 2005 s 37 if he uses premises to do anything in accordance with an authorisation under s 93(3) (see PARA 372): s 40(1). The

Secretary of State may make regulations disapplying s 40(1) to specified classes of premises: s 40(2). At the date at which this volume states the law, no such regulations had been made.

22 Gambling Act 2005 s 37(7)(b). See s 214; and PARA 534. As to the meaning of 'temporary use notice' see PARA 550.

23 Gambling Act 2005 s 37(7)(c). See s 247 (family entertainment centre gaming machine permits); and PARA 562; s 248 (no prize); and PARA 654; s 249 (limited prize); and PARA 655.

24 Gambling Act 2005 s 37(7)(d). See the Gambling Act 2005 s 269 (exempt gaming); and PARA 665; s 271 (club gaming permits); and PARA 581; s 273 (club machine permits); and PARA 582. As to the meaning of 'miners' welfare institute' see PARA 580.

25 Gambling Act 2005 s 37(7)(e). See the Gambling Act 2005 s 279 (exempt gaming); and PARA 668; s 282 (entitlement to make certain gaming machines available for use); and PARA 669; s 283 (licensed premises gaming machine permits); and PARA 570.

26 Gambling Act 2005 s 37(7)(f). See the Gambling Act 2005 s 287; and PARA 673.

27 Gambling Act 2005 s 37(7)(g). See the Gambling Act 2005 ss 289-292; and PARAS 592, 673-675. As to the meaning of 'prize gaming' see PARA 592.

28 Gambling Act 2005 s 37(7)(h). See the Gambling Act 2005 s 296; and PARA 650. As to the meaning of 'gaming' see PARA 310; as to the meaning of 'betting' see PARA 312; and as to the meanings of 'private gaming' and 'private betting' see PARAS 648-649.

29 Gambling Act 2005 s 37(7)(i). See the Gambling Act 2005 s 298; and PARA 652. As to the meaning of 'non-commercial gaming' see PARA 651.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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B. MISCELLANEOUS OFFENCES

617. Unlawful manufacturing, supplying, installing or adapting of gambling software.

A person commits an offence if in the course of a business he manufactures, supplies¹, installs² or adapts gambling software³ unless he acts in accordance with an operating licence⁴. A person does not, however, supply or install gambling software for these purposes by reason only of the facts that:

- 2158 (1) he makes facilities for remote communication⁵ or non-remote communication available to another person; and
- 2159 (2) the facilities are used by the other person to supply or install gambling software⁶.

1 As to the meaning of 'supply' see PARA 349 note 17; but see the text and notes 5-6.

2 As to the meaning of 'installing computer software' see PARA 349 note 18; but see the text and notes 5-6.

3 As to the meaning of 'gambling software' see PARA 349 note 18.

4 Gambling Act 2005 s 41(1). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, a fine not exceeding level 5 on the standard scale, or both; s 41(4). As to the standard scale see PARA 17 note 21. As to the meaning of 'operating licence' see PARA 349 note 2. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

5 As to the meaning of 'remote communication' see PARA 308.

6 Gambling Act 2005 s 41(3).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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618. Cheating.

A person commits an offence if he cheats at gambling¹, or does anything for the purpose of enabling or assisting another person to cheat at gambling²; and without prejudice to the generality of this provision, cheating at gambling may, in particular, consist of actual or attempted deception or interference in connection with:

- 2160 (1) the process by which gambling is conducted; or
- 2161 (2) a real or virtual game, race or other event or process³ to which gambling relates⁴.

It is immaterial for these purpose whether a person who cheats improves his chances of winning anything, or whether he wins anything⁵.

1 As to the meaning of 'gambling' see PARA 308.

2 Gambling Act 2005 s 42(1). A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding two years, to a fine, or to both, or on summary conviction to imprisonment for a term not exceeding 51 weeks, to a fine not exceeding the statutory maximum, or to both: s 42(4). As to the statutory maximum see PARA 247 note 13. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

3 As to the meaning of 'virtual game, race or other event or process' see PARA 350 note 8; and as to the meaning of 'real' see PARA 495 note 12.

4 Gambling Act 2005 s 42(3).

5 Gambling Act 2005 s 42(2).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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619. Offences relating to chain-gift schemes.

A person commits an offence if he invites another to join a chain-gift scheme, or knowingly participates in the promotion, administration or management of a chain-gift scheme¹. An arrangement is a 'chain-gift' scheme if:

- 2162 (1) in order to participate in the arrangement a person must make a payment² to one or more other participants (a 'joining fee'); and
- 2163 (2) each person who participates in the arrangement is required or invited to invite others to participate, and is encouraged to believe that he will receive the joining fees, or part of the joining fees, of other participants, to an amount in excess of the joining fee paid by him³.

1 Gambling Act 2005 s 43(1). A person guilty of such an offence is liable on summary conviction to imprisonment for a period not exceeding 51 weeks, a fine not exceeding level 5 on the standard scale, or to both: s 43(4). As to the standard scale see PARA 17 note 21. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

2 For these purposes, 'payment' means a payment of money or money's worth, but does not include the provision of goods or services; and it is immaterial whether a payment is made directly or through a person responsible for managing or administering the scheme: Gambling Act 2005 s 43(3).

3 Gambling Act 2005 s 43(2).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

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620. Provision of unlawful facilities abroad.

A person commits an offence if he does anything in Great Britain¹, or uses remote gambling equipment² situated in Great Britain, for the purpose of inviting or enabling a person in a prohibited territory³ to participate in remote gambling⁴.

1 As to the meaning of 'Great Britain' see PARA 16 note 8.

2 As to the meaning of 'remote gambling equipment' see PARA 615 note 10.

3 For these purposes, 'prohibited territory' means a country or place designated for the purpose of the Gambling Act 2005 s 44 by order made by the Secretary of State: s 44(2). An order under s 44(2) must prescribe the mode of trial and maximum penalty for an offence under s 44(1): s 44(3). At the date at which this volume states the law, no such order had been made. As to the Secretary of State see PARA 2.

4 Gambling Act 2005 s 44(1). As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(ii) Protection of Children and Young Persons

A. PRINCIPAL OFFENCES

621. Invitation to child or young person to gamble.

A person commits an offence if he invites, causes or permits a child¹ or young person² to gamble³. For these purposes, a reference to inviting a child or young person to gamble includes, in particular, a reference to intentionally sending to a child or young person any document which advertises gambling⁴, or bringing to the attention of a child or young person information about gambling with a view to encouraging the child or young person to gamble⁵. If a document which is sent to a child or young person and which advertises gambling gives the name or contact details⁶ of a person to whom payment may be made or from whom information may be obtained, that person is to be treated as having committed the offence under the above provisions unless he proves that the document was sent without his consent and without his authority⁷. Similarly, if information about gambling is brought to the attention of a child or young person and includes the name or contact details⁸ of a person to whom payment may be made or from whom information may be obtained, that person ('the advertiser') is to be treated as having committed the offence under the above provisions unless he proves that the information was brought to the attention of the child or young person either without the advertiser's consent or authority, or as an incident of the information being brought to the attention of adults⁹ and without a view to encouraging the child or young person to gamble¹⁰.

The offence described above does not, however, apply in relation to:

- 2164 (1) participation in private or non-commercial gaming¹¹;
- 2165 (2) participation in private or non-commercial betting¹²;
- 2166 (3) participation in a lottery¹³;
- 2167 (4) participation in football pools¹⁴;
- 2168 (5) the use of a Category D gaming machine¹⁵;
- 2169 (6) participation in equal chance gaming¹⁶ in accordance with a prize gaming permit¹⁷;
- 2170 (7) participation in equal chance gaming at a licensed family entertainment centre¹⁸;
- 2171 (8) participation in prize gaming¹⁹ at a non-licensed family entertainment centre²⁰; or
- 2172 (9) participation²¹ in prize gaming at a travelling fair²².

1 As to the meaning of 'child' see PARA 331 note 2.

2 As to the meaning of 'young person' see PARA 353 note 5.

3 Gambling Act 2005 s 46(1). As to the meaning of 'gambling' see PARA 308. As to the penalty for such an offence see PARA 634; and as to defences see PARA 635. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

4 As to the meaning of 'advertising gambling' see the Gambling Act 2005 ss 327, 353(1); and PARA 677.

- 5 Gambling Act 2005 s 46(3).
- 6 In the Gambling Act 2005 s 46(4), (5) 'contact details' means (1) an address or other location; (2) a telephone number; (3) an internet site; or (4) an email address: s 46(6).
- 7 Gambling Act 2005 s 46(4).
- 8 See note 6.
- 9 As to the meaning of 'adult' see PARA 372 note 7.
- 10 Gambling Act 2005 s 46(5).
- 11 Gambling Act 2005 s 46(2)(a). As to the meaning of 'gaming' see PARA 310; as to the meaning of 'private gaming' see PARA 648; and as to the meaning of 'non-commercial gaming' see PARA 651.
- 12 Gambling Act 2005 s 46(2)(b). As to the meaning of 'betting' see PARA 312; as to the meaning of 'private betting' see PARA 649; and as to the meaning of 'non-commercial betting' see PARA 602 note 16.
- 13 Gambling Act 2005 s 46(2)(c). As to the meaning of 'lottery' see PARA 317; and as to the meaning of 'participating in a lottery' see PARA 308 note 4.
- 14 Gambling Act 2005 s 46(2)(d). As to the meaning of 'football pools' see PARA 363 note 15.
- 15 Gambling Act 2005 s 46(2)(e). As to the meaning of 'gaming machine' see PARA 547; as to categories of gaming machine see PARA 548; and as to the meaning of 'Category D gaming machine' see PARA 552.
- 16 As to the meaning of 'equal chance gaming' see PARA 311 note 4.
- 17 Gambling Act 2005 s 46(2)(f). As to the meaning of 'prize gaming permit' see PARA 592.
- 18 Gambling Act 2005 s 46(2)(g). As to the meaning of 'licensed family entertainment centre' see PARA 363 note 3.
- 19 As to the meaning of 'prize gaming' see PARA 592.
- 20 Gambling Act 2005 s 46(2)(h). As to the meaning of 'family entertainment centre' see PARA 349 note 15.
- 21 In accordance with the Gambling Act 2005 s 292: see PARA 673.
- 22 Gambling Act 2005 s 46(2)(i). As to the meaning of 'travelling fair' see PARA 672.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

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622. Invitation to enter premises; entry into premises by young person.

A person commits an offence if he invites or permits a child¹ or young person² to enter premises³ if a casino premises licence⁴ has effect in respect of the premises, and the premises are being used in reliance on that licence when the child or young person is invited or permitted to enter⁵. This does not, however, apply where a child or young person is permitted to enter a part of premises which are being used for a regional casino⁶, and that part is not being used for the provision of facilities for gambling⁷ when the child or young person is permitted to enter⁸. For these purposes, the Secretary of State⁹ may by regulations make provision for distinguishing between one part of premises and another and determining when use is being made of a part of premises¹⁰.

A person also commits an offence if he invites or permits a child or young person:

- 2173 (1) to enter premises other than a track¹¹ if a betting premises licence¹² has effect in respect of the premises, and the premises are being used in reliance on that licence when the child or young person is invited or permitted to enter¹³;
 - 2174 (2) to enter premises if an adult gaming centre premises licence¹⁴ has effect in respect of the premises, and the premises are being used in reliance on that licence when the child or young person is invited or permitted to enter¹⁵;
 - 2175 (3) to enter an area from which children and young persons are required to be excluded by virtue of the statutory condition to that effect¹⁶ attaching to a premises licence in respect of a track¹⁷;
 - 2176 (4) to enter part of premises if:
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- 233. (a) the premises are a licensed family entertainment centre¹⁸;
 - 234. (b) a person entering that part of the premises has access to a Category C gaming machine¹⁹; and
 - 235. (c) at the time when the child or young person is permitted or invited to enter, a Category C gaming machine is being used or is available for use²⁰.
- 150

A young person commits an offence if he enters premises in circumstances where a person would commit an offence under the above provisions if he invited or permitted the young person to enter²¹.

1 As to the meaning of 'child' see PARA 331 note 2.

2 As to the meaning of 'young person' see PARA 353 note 5.

3 As to the meaning of 'premises' see PARA 311 note 5.

4 As to the meaning of 'casino premises licence' see PARA 460 at head (1).

5 Gambling Act 2005 s 47(1). As to the penalty for such an offence see PARA 634; and as to defences see PARA 635. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

- 6 As to the meaning of 'casino' see PARA 311. As to the classification of casinos by regulations see the Gambling Act 2005 s 7(5)-(7) (s 7(5)(a) not in force); and PARA 311. There is no statutory definition of 'regional casino' for these purposes; and at the date at which this volume states the law, it is not possible to apply for a casino premises licence in respect of such a casino.
- 7 As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.
- 8 Gambling Act 2005 s 47(2).
- 9 As to the Secretary of State see PARA 2.
- 10 Gambling Act 2005 s 47(3). At the date at which this volume states the law, no such regulations had been made.
- 11 As to the meaning of 'track' see PARA 372 note 8.
- 12 As to the meaning of 'betting premises licence' see PARA 460 at head (5). For the purposes of the Gambling Act 2005 Pt 4 (ss 45-64) (see PARA 621; the text and notes 1-10, 13-21; and PARA 623 et seq), an occasional use notice in respect of premises is to be treated as if it were a betting premises licence: Gambling Act 2005 s 60(1)(b). As to the meaning of 'occasional use notice' see PARA 616 note 20.
- 13 Gambling Act 2005 s 47(4); and see note 5.
- 14 As to the meaning of 'adult gaming centre premises licence' see PARA 460 at head (3).
- 15 Gambling Act 2005 s 47(5); and see note 5.
- 16 Ie by virtue of the Gambling Act 2005 s 182: see PARA 498.
- 17 Gambling Act 2005 s 47(6); and see note 5. For the purposes of the Gambling Act 2005 Pt 4, a temporary use notice in respect of the use of premises to carry on an activity is to be treated as if it were a premises licence authorising that activity: s 60(1)(a). Sections 47(6), 182 apply in relation to a notice so treated as a premises licence: s 60(2).
- 18 As to the meaning of 'licensed family entertainment centre' see PARA 363 note 3.
- 19 As to the meaning of 'gaming machine' see PARA 547; as to categories of gaming machine see PARA 548; and as to the meaning of 'Category C gaming machine' see PARA 551.
- 20 Gambling Act 2005 s 47(7); and see note 5.
- 21 Gambling Act 2005 s 49; and see note 5.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(ii) Protection of Children and Young Persons/A. PRINCIPAL OFFENCES/623. Gambling by a young person.

623. Gambling by a young person.

A young person¹ commits an offence if he gambles². This does not, however, apply to:

- 2177 (1) participation in private or non-commercial gaming³;
- 2178 (2) participation in private or non-commercial betting⁴;
- 2179 (3) participation in a lottery⁵;
- 2180 (4) participation in football pools⁶;
- 2181 (5) the use of a Category D gaming machine⁷;
- 2182 (6) participation in equal chance gaming⁸ in accordance with a prize gaming permit⁹;
- 2183 (7) participation in equal chance gaming at a licensed family entertainment centre¹⁰;
- 2184 (8) participation in prize gaming¹¹ at a non-licensed family entertainment centre¹²; or
- 2185 (9) participation in prize gaming¹³ at a travelling fair¹⁴.

1 As to the meaning of 'young person' see PARA 353 note 5.

2 Gambling Act 2005 s 48(1). As to the penalty for such an offence see PARA 634; and as to defences see PARA 635. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

3 Gambling Act 2005 s 48(2)(a). As to the meaning of 'gaming' see PARA 310; as to the meaning of 'private gaming' see PARA 648; and as to the meaning of 'non-commercial gaming' see PARA 651.

4 Gambling Act 2005 s 48(2)(b). As to the meaning of 'betting' see PARA 312; as to the meaning of 'private betting' see PARA 649; and as to the meaning of 'non-commercial betting' see PARA 602 note 16.

5 Gambling Act 2005 s 48(2)(c). As to the meaning of 'lottery' see PARA 317; and as to the meaning of 'participating in a lottery' see PARA 308 note 4.

6 Gambling Act 2005 s 48(2)(d). As to the meaning of 'football pools' see PARA 363 note 15.

7 Gambling Act 2005 s 48(2)(e). As to the meaning of 'gaming machine' see PARA 547; as to categories of gaming machine see PARA 548; and as to the meaning of 'Category D gaming machine' see PARA 552.

8 As to the meaning of 'equal chance gaming' see PARA 311 note 4.

9 Gambling Act 2005 s 48(2)(f). As to the meaning of 'prize gaming permit' see PARA 592.

10 Gambling Act 2005 s 48(2)(g). As to the meaning of 'licensed family entertainment centre' see PARA 363 note 3.

11 As to the meaning of 'prize gaming' see PARA 592.

12 Gambling Act 2005 s 48(2)(h). As to the meaning of 'family entertainment centre' see PARA 349 note 15.

13 Ie in accordance with the Gambling Act 2005 s 292: see PARA 673.

14 Gambling Act 2005 s 48(2)(i). As to the meaning of 'travelling fair' see PARA 672.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(ii) Protection of Children and Young Persons/A. PRINCIPAL OFFENCES/624. Provision of facilities for gambling by young person.

624. Provision of facilities for gambling by young person.

A young person¹ commits an offence if he provides facilities for gambling². This does not, however, apply to the provision of facilities in connection with:

- 2186 (1) private or non-commercial gaming³;
- 2187 (2) private or non-commercial betting⁴;
- 2188 (3) a lottery⁵;
- 2189 (4) football pools⁶; or
- 2190 (5) prize gaming⁷ at a travelling fair⁸.

1 As to the meaning of 'young person' see PARA 353 note 5.

2 Gambling Act 2005 s 50(1). As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308. As to the penalty for such an offence see PARA 634; and as to defences see PARA 635. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

3 Gambling Act 2005 s 50(2)(a). As to the meaning of 'gaming' see PARA 310; as to the meaning of 'private gaming' see PARA 648; and as to the meaning of 'non-commercial gaming' see PARA 651.

4 Gambling Act 2005 s 50(2)(b). As to the meaning of 'betting' see PARA 312; as to the meaning of 'private betting' see PARA 649; and as to the meaning of 'non-commercial betting' see PARA 602 note 16.

5 Gambling Act 2005 s 50(2)(c). As to the meaning of 'lottery' see PARA 317.

6 Gambling Act 2005 s 50(2)(d). As to the meaning of 'football pools' see PARA 363 note 15.

7 In accordance with the Gambling Act 2005 s 292: see PARA 673. As to the meaning of 'prize gaming' see PARA 592.

8 Gambling Act 2005 s 50(2)(e). As to the meaning of 'travelling fair' see PARA 672.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(ii) Protection of Children and Young Persons/B. EMPLOYMENT OFFENCES/625. Employment of child or young person to provide facilities for gambling.

B. EMPLOYMENT OFFENCES

625. Employment of child or young person to provide facilities for gambling.

A person commits an offence if he employs¹ a child² or young person³ to provide facilities for gambling⁴. This does not, however, apply to the provision of facilities in connection with:

- 2191 (1) private or non-commercial gaming⁵;
- 2192 (2) private or non-commercial betting⁶;
- 2193 (3) a lottery⁷;
- 2194 (4) football pools⁸; or
- 2195 (5) prize gaming⁹ at a travelling fair¹⁰.

1 In the Gambling Act 2005 Pt 4 (ss 45-64) (see PARA 621 et seq; the text and notes 2-10; and PARA 626 et seq), a reference to employing a person includes a reference to (1) employing or engaging the person whether or not under a contract of employment; and (2) causing or permitting the person to be employed or engaged: s 61(1). Where a person commits an offence under Pt 4 by employing a person or by being employed, he is to be treated as committing the offence on each day during any part of which the employment continues: s 61(2).

2 As to the meaning of 'child' see PARA 331 note 2.

3 As to the meaning of 'young person' see PARA 353 note 5.

4 Gambling Act 2005 s 51(1). As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308. As to the penalty for such an offence see PARA 634; and as to defences see PARA 635. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

5 Gambling Act 2005 s 51(2)(a). As to the meaning of 'gaming' see PARA 310; as to the meaning of 'private gaming' see PARA 648; and as to the meaning of 'non-commercial gaming' see PARA 651.

6 Gambling Act 2005 s 51(2)(b). As to the meaning of 'betting' see PARA 312; as to the meaning of 'private betting' see PARA 649; and as to the meaning of 'non-commercial betting' see PARA 602 note 16.

7 Gambling Act 2005 s 51(2)(c). As to the meaning of 'lottery' see PARA 317.

8 Gambling Act 2005 s 51(2)(d). As to the meaning of 'football pools' see PARA 363 note 15.

9 In accordance with the Gambling Act 2005 s 292: see PARA 673. As to the meaning of 'prize gaming' see PARA 592.

10 Gambling Act 2005 s 51(2)(e). As to the meaning of 'travelling fair' see PARA 672.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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626. Employment of child for lottery or football pools.

A person commits an offence if he employs¹ a child² to provide facilities for gambling³ in connection with a lottery⁴, other than a lottery which forms part of the National Lottery⁵, or in connection with football pools⁶.

1 As to the meaning of references to employing a person see PARA 625 note 1.

2 As to the meaning of 'child' see PARA 331 note 2.

3 As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

4 As to the meaning of 'lottery' see PARA 317.

5 As to the National Lottery see PARA 686 et seq.

6 Gambling Act 2005 s 52. As to the meaning of 'football pools' see PARA 363 note 15. As to the penalty for such an offence see PARA 634; and as to defences see PARA 635. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(ii) Protection of Children and Young Persons/B. EMPLOYMENT OFFENCES/627. Employment of child on bingo and club premises.

627. Employment of child on bingo and club premises.

A person commits an offence if he employs¹ a child² to perform any function on premises³ where, and at a time when, facilities are provided⁴ for the playing of bingo⁵, or facilities for gambling⁶ are provided in accordance with a club gaming permit⁷ or a club machine permit⁸.

1 As to the meaning of references to employing a person see PARA 625 note 1.

2 As to the meaning of 'child' see PARA 331 note 2.

3 As to the meaning of 'premises' see PARA 311 note 5.

4 As to the meaning of 'providing facilities' for gambling see PARA 309.

5 As to the meaning of 'bingo' see PARA 349 note 8.

6 As to the meaning of 'gambling' see PARA 308.

7 As to the meaning of 'club gaming permit' see PARA 581.

8 Gambling Act 2005 s 53. As to the meaning of 'club machine permit' see PARA 582. As to the penalty for such an offence see PARA 634; and as to defences see PARA 635. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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628. Employment of child or young person on premises with gaming machines.

A person commits an offence if:

- 2196 (1) he employs¹ a child² or young person³ to perform any function on premises⁴ where a Category A⁵, Category B⁶, Category C⁷ or Category D gaming machine⁸ is situated; and
- 2197 (2) the child or young person is or may be required in the course of his employment to perform a function in connection with the gaming machine⁹.

A young person commits an offence if he is employed in contravention of the above provision¹⁰.

- 1 As to the meaning of references to employing a person see PARA 625 note 1.
- 2 As to the meaning of 'child' see PARA 331 note 2.
- 3 As to the meaning of 'young person' see PARA 353 note 5.
- 4 As to the meaning of 'premises' see PARA 311 note 5.
- 5 As to the meaning of 'Category A gaming machine' see PARA 549; as to the meaning of 'gaming machine' see PARA 547; and as to categories of gaming machine see generally PARA 548.
- 6 As to the meaning of 'Category B gaming machine' see PARA 550. The reference in the text to a Category B machine is to be treated as referring to any sub-category of Category B: Categories of Gaming Machine Regulations 2007, SI 2007/2158, reg 6(1).
- 7 As to the meaning of 'Category C gaming machine' see PARA 551.
- 8 As to the meaning of 'Category D gaming machine' see PARA 552.
- 9 Gambling Act 2005 s 54(1). As to the penalty for such an offence see PARA 634; and as to defences see PARA 635. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.
- 10 Gambling Act 2005 s 54(2); and see note 9.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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629. Employment of child or young person in casino etc.

A person commits an offence if he employs¹ a child² or young person³ to perform any function on premises⁴ in respect of which any of the following have effect:

- 2198 (1) a casino premises licence⁵;
- 2199 (2) a betting premises licence⁶; and
- 2200 (3) an adult gaming centre premises licence⁷.

This does not, however, apply to employment at a time when no activity is being carried on in reliance on the premises licence, or to employment on a part of premises which are being used for a regional casino⁸ at a time when that part is not being used for the provision of facilities for gambling⁹. For these purposes, the Secretary of State¹⁰ may by regulations make provision for distinguishing between one part of premises and another and for determining when use is being made of a part of premises¹¹.

A young person commits an offence if he is employed in contravention of the above provisions¹².

1 As to the meaning of references to employing a person see PARA 625 note 1.

2 As to the meaning of 'child' see PARA 331 note 2.

3 As to the meaning of 'young person' see PARA 353 note 5.

4 As to the meaning of 'premises' see PARA 311 note 5.

5 As to the meaning of 'casino premises licence' see PARA 460 at head (1).

6 As to the meaning of 'betting premises licence' see PARA 460 at head (5). As to the treatment of an occasional use notice as a betting premises licence for these purposes see PARA 622 note 12.

7 Gambling Act 2005 s 55(1). As to the meaning of 'adult gaming centre premises licence' see PARA 460 at head (3). As to the penalty for such an offence see PARA 634; and as to defences see PARA 635. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

8 As to the classification of casinos by regulations see the Gambling Act 2005 s 7(5)-(7) (s 7(5)(a) not in force); and PARA 311. There is no statutory definition of 'regional casino' for these purposes; and at the date at which this volume states the law, it is not possible to apply for a casino premises licence in respect of such a casino.

9 Gambling Act 2005 s 55(2).

10 As to the Secretary of State see PARA 2.

11 Gambling Act 2005 s 55(3).

12 Gambling Act 2005 s 55(4); and see note 7.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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C. MISCELLANEOUS OFFENCES

630. Invitation to child to participate in lottery.

A person commits an offence if he invites¹, causes or permits a child² to participate in a lottery³ other than:

- 2201 (1) an exempt⁴ incidental non-commercial lottery⁵;
- 2202 (2) an exempt⁶ private lottery⁷, whether a private society lottery⁸, a work lottery⁹ or a residents' lottery¹⁰; or
- 2203 (3) a lottery which forms part of the National Lottery¹¹.

If a document which is sent to a child and which advertises participation in a lottery gives the name or contact details¹² of a person to whom payment may be made or from whom information may be obtained, that person is to be treated as having committed the offence under the above provisions unless he proves that the document was sent without his consent and without his authority¹³. Similarly, if information about participation in a lottery is brought to the attention of a child and includes the name or contact details¹⁴ of a person to whom payment may be made or from whom information may be obtained, that person ('the advertiser') is to be treated as having committed the offence under the above provisions unless he proves that the information was brought to the attention of the child either without the advertiser's consent or authority, or as an incident of the information being brought to the attention of adults¹⁵ and without a view to encouraging the child to participate in a lottery¹⁶.

1 For these purposes, a reference to inviting a child to participate in a lottery includes, in particular, a reference to intentionally sending to a child any document which advertises participation in a lottery, or bringing to the attention of a child information about participation in a lottery with a view to encouraging the child to do so: see the Gambling Act 2005 s 46(3) (applied for these purposes with modifications by s 56(2)). As to advertising see PARA 677 et seq.

2 As to the meaning of 'child' see PARA 331 note 2.

3 As to the meaning of 'lottery' see PARA 317; and as to the meaning of 'participating in a lottery' see PARA 308 note 4.

4 I.e. a lottery that is exempt for the purposes of the Gambling Act 2005 s 258 (see PARA 643) by virtue of Sch 11 Pt 1 (paras 1-8): see PARA 659.

5 As to the meaning of 'incidental non-commercial lottery' see PARA 659.

6 I.e. a lottery that is exempt for the purposes of the Gambling Act 2005 s 258 (see PARA 643) by virtue of Sch 11 Pt 2 (para 9-19): see PARA 660.

7 As to the meaning of 'private lottery' see PARA 660 note 4.

8 As to the meaning of 'private society lottery' see PARA 660.

9 As to the meaning of 'work lottery' see PARA 660.

10 As to the meaning of 'residents' lottery' see PARA 660.

11 Gambling Act 2005 s 56(1). As to the National Lottery see PARA 686 et seq. As to the penalty for such an offence see PARA 634; and as to defences see PARA 635. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

Note that no National Lottery ticket must be sold by or to a person who has not attained the age of 16 years: see PARA 710.

12 In the Gambling Act 2005 s 46(4), (5) 'contact details' means (1) an address or other location; (2) a telephone number; (3) an internet site; or (4) an email address: s 46(6) (applied for these purposes by s 56(2)).

13 Gambling Act 2005 s 46(4) (applied for these purposes with modifications by s 56(2)).

14 See note 12.

15 As to the meaning of 'adult' see PARA 372 note 7.

16 Gambling Act 2005 s 46(5) (applied for these purposes with modifications by s 56(2)).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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631. Invitation to child to participate in football pools.

A person commits an offence if he invites¹, causes or permits a child² to participate in football pools³.

If a document which is sent to a child and which advertises participation in football pools gives the name or contact details⁴ of a person to whom payment may be made or from whom information may be obtained, that person is to be treated as having committed the offence under the above provisions unless he proves that the document was sent without his consent and without his authority⁵. Similarly, if information about participation in football pools is brought to the attention of a child and includes the name or contact details⁶ of a person to whom payment may be made or from whom information may be obtained, that person ('the advertiser') is to be treated as having committed the offence under the above provisions unless he proves that the information was brought to the attention of the child either without the advertiser's consent or authority, or as an incident of the information being brought to the attention of adults⁷ and without a view to encouraging the child to participate in football pools⁸.

1 For these purposes, a reference to inviting a child to participate in football pools includes, in particular, a reference to intentionally sending to a child any document which advertises participation in football pools, or bringing to the attention of a child information about participation in football pools with a view to encouraging the child to do so: see the Gambling Act 2005 s 46(3) (applied for these purposes with modifications by s 57(2)). As to the meaning of 'football pools' see PARA 363 note 15. As to advertising see PARA 677 et seq.

2 As to the meaning of 'child' see PARA 331 note 2.

3 Gambling Act 2005 s 57(1). As to the penalty for such an offence see PARA 634; and as to defences see PARA 635. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

4 In the Gambling Act 2005 s 46(4), (5) 'contact details' means (1) an address or other location; (2) a telephone number; (3) an internet site; or (4) an email address: s 46(6) (applied for these purposes by s 57(2)).

5 Gambling Act 2005 s 46(4) (applied for these purposes with modifications by s 57(2)).

6 See note 4.

7 As to the meaning of 'adult' see PARA 372 note 7.

8 Gambling Act 2005 s 46(5) (applied for these purposes with modifications by s 57(2)).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(ii) Protection of Children and Young Persons/C. MISCELLANEOUS OFFENCES/632. Failure to comply with requirement to return stake etc to child or young person and not to give prize.

632. Failure to comply with requirement to return stake etc to child or young person and not to give prize.

A person commits an offence if without reasonable excuse he fails to comply with a statutory condition attached¹ to an operating licence² to the effect that if the licensee³ becomes aware that a child⁴ or young person⁵ is using or has used facilities for gambling⁶ provided⁷ in reliance on the licence, the licensee:

- 2204 (1) must return any money paid in respect of the use of those facilities, whether by way of fee, stake⁸ or otherwise, by the child or young person as soon as is reasonably practicable; and
- 2205 (2) may not give a prize⁹ to the child or young person¹⁰.

1 Is a condition attached by virtue of the Gambling Act 2005 s 83: see PARA 363.

2 As to the meaning of 'operating licence' see PARA 349 note 2.

3 As to the meaning of 'licensee' for these purposes see PARA 363 note 5.

4 As to the meaning of 'child' see PARA 331 note 2.

5 As to the meaning of 'young person' see PARA 353 note 5. See, however, the Gambling Act 2005 s 84(4)(b); and PARA 363 text and notes 14-16.

6 As to the meaning of 'gambling' see PARA 308.

7 As to the meaning of 'providing facilities' for gambling see PARA 309.

8 As to the meaning of 'stake' see PARA 312 note 6.

9 As to the meaning of 'prize' for these purposes see PARA 363 note 11.

10 See the Gambling Act 2005 s 58. As to the penalty for such an offence see PARA 634; and as to defences see PARA 635. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(ii) Protection of Children and Young Persons/C. MISCELLANEOUS OFFENCES/633. Age limit for Category D gaming machines.

633. Age limit for Category D gaming machines.

The Secretary of State¹ may by order create an offence of inviting, causing or permitting a child² or young person³ below a specified age to use a Category D gaming machine⁴. Before making such an order the Secretary of State must consult:

- 2206 (1) the Gambling Commission⁵;
- 2207 (2) one or more persons who appear to the Secretary of State to represent the interests of persons carrying on gambling⁶ businesses; and
- 2208 (3) one or more persons who appear to the Secretary of State to have knowledge about social problems relating to gambling⁷.

Such an order may apply to a class of Category D gaming machine determined by reference to:

- 2209 (a) the nature of the facilities for gambling which are made available on the machine;
- 2210 (b) the nature or value of a prize⁸ offered by the machine;
- 2211 (c) the manner in which the machine operates; or
- 2212 (d) any other matter⁹.

1 As to the Secretary of State see PARA 2.

2 As to the meaning of 'child' see PARA 331 note 2.

3 As to the meaning of 'young person' see PARA 353 note 5.

4 Gambling Act 2005 s 59(1). As to the meaning of 'gaming machine' see PARA 547; as to categories of gaming machine generally see PARA 548; and as to the meaning of 'Category D gaming machine' see PARA 552. As to the penalty for any offence so created see PARA 634; and as to defences see PARA 635. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

An order under s 59(1) may, in particular (1) apply (with modifications) or include provision similar to s 46(3)-(6) (see PARA 621); and (2) make consequential amendments of the Gambling Act 2005: s 59(2). At the date at which this volume states the law, no such order had been made.

5 As to the Gambling Commission see PARA 4.

6 As to the meaning of 'gambling' see PARA 308.

7 Gambling Act 2005 s 59(3).

8 As to the meaning of 'prize' see PARA 548 note 10.

9 Gambling Act 2005 s 59(4).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(ii) Protection of Children and Young Persons/D. PENALTIES AND DEFENCES/634. Penalty for offences relating to protection of children and young persons.

D. PENALTIES AND DEFENCES

634. Penalty for offences relating to protection of children and young persons.

A person guilty of an offence under Part 4 of the Gambling Act 2005¹ is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or a fine not exceeding level 5 on the standard scale, or to both². In relation to an offence committed by a young person³, however, the penalty is a fine not exceeding level 3 on the standard scale⁴.

- 1 le under the Gambling Act 2005 Pt 4 (ss 45-64): see PARA 621 et seq.
- 2 Gambling Act 2005 s 62(1). As to the standard scale see PARA 17 note 21.
- 3 As to the meaning of 'young person' see PARA 353 note 5.
- 4 See the Gambling Act 2005 s 62(2).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(ii) Protection of Children and Young Persons/D. PENALTIES AND DEFENCES/635. Defence of reasonable belief about person's age.

635. Defence of reasonable belief about person's age.

Where a person is charged with an offence under Part 4 of the Gambling Act 2005¹ of doing anything in relation to an individual who is a child² or a young person³ it is a defence for the person charged to prove that:

- 2213 (1) he took all reasonable steps to determine the individual's age; and
- 2214 (2) he reasonably believed that the individual was not a child or, as the case may be, was not a young person⁴.

1 Under the Gambling Act 2005 Pt 4 (ss 45-64): see PARA 621 et seq.

2 As to the meaning of 'child' see PARA 331 note 2.

3 As to the meaning of 'young person' see PARA 353 note 5.

4 See the Gambling Act 2005 s 63(1), (2).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(ii) Protection of Children and Young Persons/D. PENALTIES AND DEFENCES/636. Use of children or young persons in enforcement operations.

636. Use of children or young persons in enforcement operations.

Nothing in Part 4 of the Gambling Act 2005¹ renders unlawful:

- 2215 (1) anything done, in the performance of his functions, by a constable², an enforcement officer³ or an authorised person⁴; or
- 2216 (2) anything done by a child⁵ or young person⁶ at the request of a constable, enforcement officer or authorised person acting in the performance of his functions⁷.

1 Ie the Gambling Act 2005 Pt 4 (ss 45-64): see PARA 621 et seq.

2 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

3 As to enforcement officers see PARA 600.

4 As to authorised persons see PARA 601.

5 As to the meaning of 'child' see PARA 331 note 2.

6 As to the meaning of 'young person' see PARA 353 note 5.

7 Gambling Act 2005 s 64(1). Section 64(1) applies to an order under s 59 (see PARA 633) as it applies to the provisions of Pt 4: s 64(2).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(iii) False Information/637. Giving false or misleading information.

(iii) False Information

637. Giving false or misleading information.

A person commits an offence if without reasonable excuse he gives to the Gambling Commission¹ or to a licensing authority² for a purpose connected with a provision of the Gambling Act 2005, whether or not in relation to an application under that Act, information which is false or misleading³.

Where it appears to the Commission or a licensing authority that a decision under the 2005 Act was taken by it in reliance upon false or misleading information, it may do anything that it thinks expedient for the purpose of cancelling, terminating or varying an effect of the decision. Such action does not, however, make unlawful anything done before the action is taken⁴.

1 As to the Gambling Commission see PARA 4.

2 As to the licensing authorities see PARA 3.

3 Gambling Act 2005 s 342(1). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or a fine not exceeding level 5 on the standard scale, or to both: s 342(2). As to the standard scale see PARA 17 note 21. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684. A licensing authority may institute criminal proceedings in respect of such an offence: see s 346(1)(l); and PARA 345. As to the licensing authorities see PARA 3.

4 Gambling Act 2005 s 342(4).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(iv) Offences with regard to Gaming Machines/638. Unlawfully making a gaming machine available for use.

(iv) Offences with regard to Gaming Machines

638. Unlawfully making a gaming machine available for use.

A person commits an offence if he makes a gaming machine¹ available for use by another unless:

- 2217 (1) he makes the machine available for use in accordance with an operating licence²; or
- 2218 (2) one of the statutory exceptions³ applies⁴.

A person also commits an offence if he makes a gaming machine available for use in contravention of regulations⁵ controlling the circumstances in which such a machine is to be made available for use⁶.

1 As to the meaning of 'gaming machine' see PARA 547.

2 As to the meaning of 'operating licence' see PARA 349 note 2.

3 I.e. an exception in (1) the Gambling Act 2005 s 247 (family entertainment centre gaming machine permits: see PARA 562); (2) s 248 or s 249 (no prize or limited prize: see PARAS 654-655); (3) s 271 (club gaming permits: see PARA 581); (4) s 273 (club machine permits: see PARA 582); (5) s 282 (automatic entitlement: see PARA 669); (6) s 283 (licensed premises gaming machine permits: see PARA 570); or (7) s 287 (use of gaming machines at a travelling fair: see PARA 673).

4 Gambling Act 2005 s 242(1). As to the penalty for such an offence see PARA 641. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684. A licensing authority may institute criminal proceedings in respect of such an offence: see s 346(1)(e); and PARA 345. As to the licensing authorities see PARA 3.

5 I.e. regulations under the Gambling Act 2005 s 240: see PARA 553.

6 Gambling Act 2005 s 242(2); and see note 4.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(iv) Offences with regard to Gaming Machines/639. Unlawful manufacture, supply etc of gaming machines.

639. Unlawful manufacture, supply etc of gaming machines.

A person commits an offence if he manufactures, supplies¹, installs², adapts³, maintains or repairs a gaming machine⁴ or part of a gaming machine⁵ unless:

- 2219 (1) he acts in accordance with an operating licence⁶; or
- 2220 (2) a statutory exception⁷ applies⁸.

A person also commits an offence if he supplies, installs, adapts, maintains or repairs a gaming machine or part of a gaming machine, and he fails to comply with a provision of regulations⁹ as to such activities¹⁰.

The above provisions do not, however, apply to the supply of a gaming machine, or part of a gaming machine, as scrap without any element of salvage, or incidental to the sale or letting of property on which the machine has previously been used in reliance on a provision of the Gambling Act 2005¹¹.

1 As to the meaning of 'supply' see PARA 349 note 17.

2 As to the meaning of 'installing part of a gaming machine' see PARA 560 note 3.

3 As to the meaning of 'adapting a gaming machine' see PARA 547 note 2.

4 As to the meaning of 'gaming machine' see PARA 547.

5 As to the meaning of 'part of a gaming machine' see PARA 553 note 3.

6 As to the meaning of 'operating licence' see PARA 349 note 2.

7 I.e. an exception in or under (1) the Gambling Act 2005 s 248 (no prize: see PARA 654) or s 250 (single-machine supply and maintenance permits: see PARA 656).

8 Gambling Act 2005 s 243(1). As to the penalty for such an offence see PARA 641. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

9 I.e. regulations under the Gambling Act 2005 s 241: see PARA 560.

10 Gambling Act 2005 s 243(2); and see note 8.

11 Gambling Act 2005 s 243(3).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(iv) Offences with regard to Gaming Machines/640. Linked machines.

640. Linked machines.

A person commits an offence if:

- 2221 (1) he makes a gaming machine¹ ('the first gaming machine') available for use by another; and
- 2222 (2) the amount or value of a prize² available through use of the first gaming machine is or may be wholly or partly determined by reference to use made of another gaming machine ('the linked gaming machine')³.

This does not, however, apply where:

- 2223 (a) the person who makes the first gaming machine available for use is the holder⁴ of a casino premises licence⁵; and
- 2224 (b) the first gaming machine and the linked gaming machine are situated on the same premises⁶.

The Secretary of State⁷ may by order amend, or modify the effect of, heads (a) and (b) above so that heads (1) and (2) above are disapplied to the linking of machines in casinos⁸ whether or not the machines are situated on the same premises:

- 2225 (i) to such extent as the order may specify;
- 2226 (ii) in such circumstances as the order may specify; and
- 2227 (iii) subject to such conditions as the order may specify⁹.

1 As to the meaning of 'gaming machine' see PARA 547.

2 As to the meaning of 'prize' see PARA 548 note 10.

3 Gambling Act 2005 s 244(1). As to the penalty for such an offence see PARA 641. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

4 As to the meaning of 'holder' in relation to a premises licence see PARA 486 note 10.

5 As to the meaning of 'casino premises licence' see PARA 460 at head (1).

6 Gambling Act 2005 s 244(2). As to the meaning of 'premises' see PARA 311 note 5.

7 As to the Secretary of State see PARA 2.

8 As to the meaning of 'casino' see PARA 311.

9 Gambling Act 2005 s 244(3). At the date at which this volume states the law, no such order had been made.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(iv) Offences with regard to Gaming Machines/641. Penalty for offences with regard to gaming machines.

641. Penalty for offences with regard to gaming machines.

A person guilty of an offence with regard to gaming machines¹ is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or a fine not exceeding level 5 on the standard scale, or to both².

¹ ie an offence under the Gambling Act 2005 Pt 10 (ss 235-251, Sch 10): see PARAS 547 et seq, 638-640, 654-656.

² Gambling Act 2005 s 246(1). As to the standard scale see PARA 17 note 21.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(v) Offences with regard to Lotteries/642. Application of provisions creating offences.

(v) Offences with regard to Lotteries

642. Application of provisions creating offences.

The provisions of Part 11 of the Gambling Act 2005¹ do not apply to the National Lottery². Subject to that, those provisions apply to anything done in relation to a lottery³ either in Great Britain⁴, or by the provision of, or by means of, remote gambling equipment⁵ situated in Great Britain⁶. They do not, however, apply in relation to a lottery if:

- 2228 (1) no person in Great Britain does anything by virtue of which he becomes a participant in the lottery⁷; and
- 2229 (2) no person in Great Britain possesses tickets⁸ for the lottery with a view to selling or supplying⁹ them to a person in Great Britain who thereby becomes a participant in the lottery¹⁰.

It is a defence for a person charged with an offence of unlawfully promoting or facilitating a lottery¹¹ to show that he reasonably believed that Part 11 of the 2005 Act did not and would not apply to the lottery, by reason of heads (1) and (2) above¹².

1 le the Gambling Act 2005 Pt 11 (ss 252-256, Sch 11): see PARAS 643 et seq, 659 et seq.

2 Gambling Act 2005 s 264. As to the National Lottery see PARA 686 et seq.

3 As to the meaning of 'lottery' see PARA 317.

4 As to the meaning of 'Great Britain' see PARA 16 note 8.

5 As to the meaning of 'remote gambling equipment' see PARA 615 note 10.

6 Gambling Act 2005 s 265(1).

7 As to the meaning of 'participating in a lottery' see PARA 308 note 4.

8 As to the meaning of 'lottery ticket' see PARA 377 note 8.

9 As to the meaning of 'sale or supply of a lottery ticket' see PARA 484 note 9.

10 Gambling Act 2005 s 265(2).

11 le an offence under the Gambling Act 2005 s 258 or s 259: see PARAS 643-644.

12 Gambling Act 2005 s 265(3).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(v) Offences with regard to Lotteries/643. Unlawfully promoting a lottery.

643. Unlawfully promoting a lottery.

A person commits an offence if he promotes a lottery¹ unless one of the statutory exceptions² applies, or the lottery is an exempt lottery³. For the purposes of the Gambling Act 2005, a person promotes a lottery if he makes or participates in making the arrangements for a lottery⁴. In particular, a person promotes a lottery if he:

- 2230 (1) makes arrangements for the printing of lottery tickets⁵;
- 2231 (2) makes arrangements for the printing of promotional material⁶;
- 2232 (3) arranges for the distribution or publication⁷ of promotional material;
- 2233 (4) possesses promotional material with a view to its distribution or publication;
- 2234 (5) makes other arrangements to advertise⁸ a lottery;
- 2235 (6) invites a person to participate in a lottery⁹;
- 2236 (7) sells or supplies a lottery ticket¹⁰;
- 2237 (8) offers to sell or supply a lottery ticket;
- 2238 (9) possesses a lottery ticket with a view to its sale or supply;
- 2239 (10) does or offers to do anything by virtue of which a person becomes a member of a class among whom prizes¹¹ in a lottery are to be allocated; or
- 2240 (11) uses premises¹² for the purpose of allocating prizes or for any other purpose connected with the administration of a lottery¹³.

Where arrangements for a lottery are made by an external lottery manager¹⁴ on behalf of a society¹⁵ or authority, for the purposes of the Gambling Act 2005 both the external lottery manager and the society or authority promote the lottery¹⁶.

The offence described above¹⁷ does not apply to activity by a person if:

- 2241 (a) he holds an operating licence¹⁸ authorising the activity, and he acts in accordance with the terms and conditions of the licence¹⁹; or
- 2242 (b) he acts, otherwise than as an external lottery manager, on behalf of a person who holds an operating licence authorising the activity, and the activity is carried on in accordance with the terms and conditions of the licence²⁰.

It is a defence for a person charged with such an offence to show that he reasonably believed:

- 2243 (i) that he was not committing the offence by reason of the fact that the lottery was an exempt lottery, or by reason of head (a) or head (b) above;
- 2244 (ii) that the arrangement to which the charge relates was not a lottery; or
- 2245 (iii) that the arrangement to which the charge relates was a lottery forming part of the National Lottery²¹.

1 As to the meaning of 'lottery' see PARA 317.

2 I.e. the exception in the Gambling Act 2005 s 258(2) or (3): see heads (a), (b) in the text.

3 Gambling Act 2005 s 258(1). In the Gambling Act 2005, 'exempt lottery' means a lottery which is exempt by virtue of a provision of Sch 11 (paras 1-56) (see PARA 659 et seq): s 258(5). As to the penalty for this offence see PARA 647; and as to the application of these provisions, and a possible defence to such a charge, see PARA 642. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684. A licensing authority may institute criminal proceedings in respect of such an offence: see s 346(1)(f); and PARA 345. As to the licensing authorities see PARA 3.

4 Gambling Act 2005 s 252(1).

5 As to the meaning of 'lottery ticket' see PARA 377 note 8.

6 For these purposes, 'promotional material' means a document which (1) advertises a specified lottery; (2) invites participation in a specified lottery; (3) contains information about how to participate in a specified lottery; or (4) lists winners in a specified lottery: Gambling Act 2005 s 252(3).

7 As to the meaning of 'publication' see PARA 344 note 3.

8 As to the meaning of 'advertise' see PARA 677.

9 As to the meaning of 'participating in a lottery' see PARA 308 note 4.

10 As to the meaning of 'sale of supply of a lottery ticket' see PARA 484 note 9.

11 As to the meaning of 'prize' see PARA 317 note 4.

12 As to the meaning of 'premises' see PARA 311 note 5.

13 Gambling Act 2005 s 252(2).

14 As to the meaning of 'external lottery manager' see PARA 377 note 4.

15 As to the meaning of 'society' see PARA 377 note 2.

16 Gambling Act 2005 s 252(4).

17 In the Gambling Act 2005 s 258(1): see the text and notes 1-3.

18 As to the meaning of 'operating licence' see PARA 349 note 2.

19 Gambling Act 2005 s 258(2).

20 Gambling Act 2005 s 258(3).

21 Gambling Act 2005 s 258(4). As to the National Lottery see PARA 686 et seq.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(v) Offences with regard to Lotteries/644. Unlawfully facilitating a lottery.

644. Unlawfully facilitating a lottery.

A person commits an offence if he facilitates a lottery¹ unless:

- 2246 (1) he acts in accordance with the terms and conditions of an operating licence²; or
- 2247 (2) the lottery is an exempt lottery³.

For these purposes, a person facilitates a lottery if, and only if, he:

- 2248 (a) prints lottery tickets⁴ for a specified lottery;
- 2249 (b) prints promotional material⁵ for a specified lottery; or
- 2250 (c) advertises a specified lottery⁶.

It is a defence for a person charged with such an offence to show that he reasonably believed:

- 2251 (i) that he was not committing the offence by reason of head (1) or head (2) above; or
- 2252 (ii) that the arrangement to which the charge relates was not a lottery; or
- 2253 (iii) that the arrangement to which the charge relates was a lottery forming part of the National Lottery⁷.

1 As to the meaning of 'lottery' see PARA 317.

2 See the Gambling Act 2005 s 259(1)(a), (3). As to the meaning of 'operating licence' see PARA 349 note 2. As to the penalty for this offence see PARA 647; and as to the application of these provisions, and a possible defence to such a charge, see PARA 642.

3 See the Gambling Act 2005 s 259(1)(b). See also note 2. As to the meaning of 'exempt lottery' see PARA 643 note 3. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684. A licensing authority may institute criminal proceedings in respect of such an offence: see s 346(1)(g); and PARA 345. As to the licensing authorities see PARA 3.

4 As to the meaning of 'lottery ticket' see PARA 377 note 8.

5 For these purposes, 'promotional material' means a document which (1) advertises a specified lottery; (2) invites participation in a specified lottery; (3) contains information about how to participate in a specified lottery; or (4) lists winners in a specified lottery: Gambling Act 2005 s 259(5). As to the meaning of 'participating in a lottery' see PARA 308 note 4; and as to advertising see PARA 677 et seq.

6 Gambling Act 2005 s 259(2).

7 Gambling Act 2005 s 259(4). As to the National Lottery see PARA 686 et seq.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(v) Offences with regard to Lotteries/645. Misusing the profits of a lottery or of certain exempt lotteries.

645. Misusing the profits of a lottery or of certain exempt lotteries.

A person commits an offence if he uses any part of the profits¹ of a lottery² in respect of which the promoter³ has stated, in whatever terms, a fund-raising purpose for the promotion of the lottery⁴, for a purpose other than that stated⁵.

A person also commits an offence if he uses any part of the profits⁶ of an incidental non-commercial lottery⁷, a private society lottery⁸ or a small society lottery⁹ for a purpose other than one for which the lottery is permitted¹⁰ to be promoted¹¹.

1 The reference in the text to using profits includes a reference to permitting profits to be used: Gambling Act 2005 s 260(3).

2 In the Gambling Act 2005, a reference to the profits of a lottery is a reference to (1) the proceeds of the lottery; minus (2) amounts deducted by the promoters of the lottery in respect of (a) the provision of prizes; (b) sums to be made available for allocation in another lottery in accordance with a rollover; or (c) other costs reasonably incurred in organising the lottery: ss 254(2), 353(1). As to the meaning of 'proceeds of a lottery' see PARA 378 note 8; as to the meaning of 'prize' see PARA 317 note 4; as to the meaning of 'rollover' see PARA 377 note 14; and as to the meaning of 'lottery' see PARA 317.

3 As to the person who promotes a lottery see PARA 643.

4 The reference in the text to a statement of a purpose for the promotion of a lottery is a reference to a statement appearing (1) on lottery tickets; or (2) in an advertisement for the lottery: Gambling Act 2005 s 260(4). For the purposes of head (2) above, 'advertisement' in relation to a lottery includes any written notice announcing that a lottery will take place or inviting people to participate in a lottery (in either case whether or not it also gives other information): s 260(5). As to the meaning of 'lottery ticket' see PARA 377 note 8; as to the meaning of 'participating in a lottery' see PARA 308 note 4; and as to the meaning of 'promoting a lottery' see PARA 643.

5 See the Gambling Act 2005 s 260(1), (2). As to the penalty for this offence see PARA 647; and as to the application of these provisions, and a possible defence to such a charge, see PARA 642. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684. A licensing authority may institute criminal proceedings in respect of such an offence: see s 346(1)(h); and PARA 345. As to the licensing authorities see PARA 3.

6 The Gambling Act 2005 s 260(3) (see note 1) has effect for these purposes as it has effect for the purposes of s 260: s 261(3).

7 Ie within the meaning of the Gambling Act 2005 Sch 11 Pt 1 (paras 1-8): see PARA 659.

8 Ie within the meaning of the Gambling Act 2005 Sch 11 Pt 2 (paras 9-19): see PARA 660.

9 Ie within the meaning of the Gambling Act 2005 Sch 11 Pt 4 (paras 30-40): see PARA 662.

10 Ie in accordance with the Gambling Act 2005 Sch 11: see PARA 659 et seq.

11 Gambling Act 2005 s 261(1), (2); and see note 5. A licensing authority may institute criminal proceedings in respect of such an offence: see s 346(1)(i); and PARA 345.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

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646. Breach of condition relating to a small society lottery.

A non-commercial society¹ commits an offence if:

- 2254 (1) a lottery², purporting to be an exempt lottery³, is promoted⁴ on the society's behalf wholly or partly at a time when the society is not registered with a local authority in accordance with the statutory requirements⁵;
- 2255 (2) the society fails to comply with the requirements to file records with the local authority⁶; or
- 2256 (3) the society provides false or misleading information for the purposes⁷ of filing such records⁸.

1 As to the meaning of 'non-commercial society' see PARA 377 note 2.

2 As to the meaning of 'lottery' see PARA 317.

3 Is an exempt lottery under the Gambling Act 2005 Sch 11 Pt 4 (paras 30-40): see PARA 662.

4 As to the meaning of 'promoting a lottery' see PARA 643.

5 Is in accordance with the Gambling Act 2005 Sch 11 Pt 5 (paras 41-56): see PARA 663.

6 Is the requirements of the Gambling Act 2005 Sch 11 para 39: see PARA 662.

7 Is for the purposes of the Gambling Act 2005 Sch 11 para 39: see PARA 662.

8 Gambling Act 2005 s 262. As to the penalty for this offence see PARA 647; and as to the application of these provisions, and a possible defence to such a charge, see PARA 642. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684. A licensing authority may institute criminal proceedings in respect of such an offence: see s 346(1)(j); and PARA 345. As to the licensing authorities see PARA 3.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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647. Penalty for offences with regard to lotteries.

A person guilty of an offence under Part 11 of the Gambling Act 2005¹ is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or a fine not exceeding level 5 on the standard scale, or to both².

¹ I.e. the Gambling Act 2005 Pt 11 (ss 252-256, Sch 11): see PARAS 642 et seq, 659 et seq.

² Gambling Act 2005 s 263(1). As to the standard scale see PARA 17 note 21. As to the application of these provisions, and a possible defence to such a charge, see PARA 642.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(vi) Exemptions and Exceptions/A. PRIVATE GAMING AND BETTING/648. Meaning of 'private gaming'.

(vi) Exemptions and Exceptions

A. PRIVATE GAMING AND BETTING

648. Meaning of 'private gaming'.

Gaming¹ is private if it satisfies the following conditions², namely that:

- 2257 (1) no charge is made for participation³; and for these purposes:
151
- 236. (a) it is immaterial how a charge is described;
 - 237. (b) it is immaterial whether a charge is in money or money's worth;
 - 238. (c) an amount deducted or levied, by a person providing facilities for gaming⁴, from sums staked or won in the course of gaming is a charge for participation in the gaming;
 - 239. (d) a charge for admission to premises⁵ where gaming takes place is to be treated as a charge for participation in the gaming; and
 - 240. (e) a stake⁶ is not a charge for participation⁷;
- 152
- 2258 (2) it is equal chance gaming⁸; but this condition does not apply in relation to domestic⁹ or residential¹⁰ gaming¹¹;
- 2259 (3) it does not occur in a place to which the public has access, whether or not on payment¹².

1 As to the meaning of 'gaming' see PARA 310.

2 Gambling Act 2005 Sch 15 para 1.

3 Gambling Act 2005 Sch 15 para 3(1).

4 As to the meaning of 'providing facilities' for gambling see PARA 309.

5 As to the meaning of 'premises' see PARA 311 note 5.

6 As to the meaning of 'stake' see PARA 312 note 6.

7 Gambling Act 2005 Sch 15 para 3(2).

8 Gambling Act 2005 Sch 15 para 4(1). As to the meaning of 'equal chance gaming' see PARA 311 note 4.

9 For these purposes, gaming is domestic if it takes place in a private dwelling and on a domestic occasion: Gambling Act 2005 Sch 15 para 2(1).

10 For these purposes, gaming is residential if (1) it takes place in a hostel, hall of residence or similar establishment which is not administered in the course of a trade or business; and (2) more than half of the participants are residents of the hostel, hall or establishment: Gambling Act 2005 Sch 15 para 2(2).

11 Gambling Act 2005 Sch 15 para 4(2).

12 Gambling Act 2005 Sch 15 para 5.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

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649. Meaning of 'private betting'.

Betting¹ is private betting if it is either domestic betting or workers' betting². A betting transaction is domestic betting if made on premises³ in which each party to the transaction lives⁴; and a betting transaction is workers' betting if made between persons each of whom is employed under a contract of employment with the same employer⁵.

1 As to the meaning of 'betting' see PARA 312.

2 Gambling Act 2005 Sch 15 para 6.

3 As to the meaning of 'premises' see PARA 311 note 5.

4 Gambling Act 2005 Sch 15 para 7(1). For these purposes, a person lives in premises if he habitually resides in any part of the premises, whether or not there are other premises in which he also habitually resides: Sch 15 para 7(2).

5 Gambling Act 2005 Sch 15 para 8.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

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650. Exceptions to offences.

A person does not commit an offence¹ by providing facilities² for private gaming³ or private betting⁴ without an operating licence⁵; and the offence of using premises⁶ for gambling without a premises licence⁷ does not apply to or in respect of the use of premises to carry on private gaming or private betting⁸.

A person does not commit an offence of providing facilities for gambling without an operating licence⁹ or using premises for gambling without a premises licence¹⁰ by making or accepting a bet¹¹, or by offering to make or accept a bet, if he acts otherwise than in the course of a business¹².

- 1 Is an offence under the Gambling Act 2005 s 33: see PARA 615.
- 2 As to the meaning of 'providing facilities' for gambling see PARA 309.
- 3 As to the meaning of 'private gaming' see PARA 648.
- 4 As to the meaning of 'private betting' see PARA 649.
- 5 See the Gambling Act 2005 s 296(1). As to the meaning of 'operating licence' see PARA 349 note 2.
- 6 As to the meaning of 'premises' see PARA 311 note 5.
- 7 Is the offence under the Gambling Act 2005 s 37: see PARA 616. As to the meaning of 'premises licence' see PARA 460 note 1.
- 8 See the Gambling Act 2005 s 296(2).
- 9 See note 1.
- 10 Is an offence under the Gambling Act 2005 s 37: see PARA 616.
- 11 As to the meaning of 'accepting a bet' see PARA 312 note 2.
- 12 See the Gambling Act 2005 s 296(3).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

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B. NON-COMMERCIAL GAMING

651. Meaning of 'non-commercial gaming'.

For the purposes of the Gambling Act 2005, gaming¹ is non-commercial if it takes place at a non-commercial event, whether as an incidental activity or as the principal or only activity². An event is non-commercial if the arrangements for the event are such that no part of the proceeds³ is to be appropriated for the purpose of private gain⁴.

1 As to the meaning of 'gaming' see PARA 310.

2 Gambling Act 2005 s 297(1).

3 For these purposes, the proceeds of an event are (1) the sums raised by the organisers (whether by way of fees for entrance or for participation, by way of sponsorship, by way of commission from traders or otherwise); minus (2) amounts deducted by the organisers in respect of costs reasonably incurred in organising the event: Gambling Act 2005 s 297(3).

4 Gambling Act 2005 s 297(2). As to the meaning of 'private gain' see PARA 377 note 2.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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652. Exceptions to general offences.

A person does not commit an offence¹ by providing facilities² for non-commercial prize gaming³ or non-commercial equal chance gaming⁴ without an operating licence⁵, if the gaming in question complies with the statutory conditions specified below⁶. Nor does the offence of using premises⁷ for gambling⁸ without a premises licence⁹ apply to or in respect of the use of premises to carry on non-commercial prize gaming or non-commercial equal chance gaming which complies with those conditions¹⁰.

The specified conditions for non-commercial prize gaming are as follows¹¹:

- 2260 (1) that players are informed that the purpose of the gaming¹² is to raise money for a specified purpose other than that of private gain¹³;
- 2261 (2) that the arrangements for the gaming are such that the profits¹⁴ will be applied for a purpose other than that of private gain¹⁵;
- 2262 (3) that the non-commercial event¹⁶ of which the gaming is part does not take place:
- 153 241. (a) on premises, other than a track¹⁷, in respect of which a premises licence has effect;
- 242. (b) on a track at a time when activities are being carried on in reliance on a premises licence; or
- 243. (c) on premises at a time when activities are being carried on in reliance on a temporary use notice¹⁸;
- 154 2263 (4) that the gaming is not remote¹⁹.

The specified conditions for non-commercial equal chance gaming are as follows²⁰:

- 2264 (i) that persons participating in the gaming are informed that the purpose of the gaming is to raise money for a specified purpose other than that of private gain²¹;
- 2265 (ii) that the arrangements for the gaming are such that the profits²² will be applied for a purpose other than that of private gain²³;
- 2266 (iii) that the arrangements for the gaming ensure compliance with regulations of the Secretary of State²⁴ limiting:
- 155 244. (A) amounts staked²⁵;
- 245. (B) participation fees²⁶;
- 246. (C) other amounts paid by a person in connection with the gaming²⁷;
- 247. (D) a combination of matters specified in heads (A) to (C) above²⁸;
- 248. (E) the amount or value of a prize²⁹;
- 249. (F) the aggregate amount or value of prizes³⁰;
- 156 2267 (iv) that the non-commercial event of which the gaming is part does not take place:
- 157

250. (A) on premises, other than a track, in respect of which a premises licence has effect;
 251. (B) on a track at a time when activities are being carried on in reliance on a premises licence; or
 252. (C) on premises at a time when activities are being carried on in reliance on a temporary use notice³¹;
 158
 2268 (v) that the gaming is non-remote³².

- 1 le an offence under the Gambling Act 2005 s 33: see PARA 615.
- 2 As to the meaning of 'providing facilities' for gambling see PARA 309.
- 3 As to the meaning of 'non-commercial gaming' see PARA 651; and as to the meaning of 'prize gaming' see PARA 592.
- 4 As to the meaning of 'equal chance gaming' see PARA 311 note 4.
- 5 As to the meaning of 'operating licence' see PARA 349 note 2.
- 6 See the Gambling Act 2005 s 298(1).
- 7 As to the meaning of 'premises' see PARA 311 note 5.
- 8 As to the meaning of 'gambling' see PARA 308.
- 9 As to the meaning of 'premises licence' see PARA 460 note 1.
- 10 See the Gambling Act 2005 s 298(2).
- 11 Gambling Act 2005 s 299(1).
- 12 As to the meaning of 'gaming' see PARA 310.
- 13 Gambling Act 2005 s 299(2). As to the meaning of 'private gain' see PARA 377 note 2.
- 14 For these purposes, 'profits' in relation to gaming means (1) the aggregate of amounts paid by way of stakes, or otherwise accruing to the person organising the gaming directly in connection with it; minus (2) amounts deducted by the person organising the gaming in respect of the provision of prizes, or other costs reasonably incurred in organising or providing facilities for the gaming: s 299(6). As to the meaning of 'stake' see PARA 312 note 6; and as to the meaning of 'prize' see PARA 310 note 2.
- 15 Gambling Act 2005 s 299(3).
- 16 As to the meaning of 'non-commercial event' see PARA 651.
- 17 As to the meaning of 'track' see PARA 372 note 8.
- 18 Gambling Act 2005 s 299(4). As to the meaning of 'temporary use notice' see PARA 535.
- 19 Gambling Act 2005 s 299(5). As to the meaning of 'remote gambling' see PARA 308.
- 20 Gambling Act 2005 s 300(1).
- 21 Gambling Act 2005 s 300(2).
- 22 For these purposes, 'profits' in relation to gaming means (1) the aggregate of amounts paid by way of stakes, or otherwise accruing to the person organising the gaming directly in connection with it; minus (2) amounts deducted by the person organising the gaming in respect of the provision of prizes, or other costs reasonably incurred in organising or providing facilities for the gaming: Gambling Act 2005 s 300(8).
- 23 Gambling Act 2005 s 300(3).
- 24 Gambling Act 2005 s 300(4). Such regulations may, in particular (1) make provision by reference to whether or not a game is part of a series; (2) make provision by reference to whether or not the non-

commercial event of which the gaming is part is associated, as defined by the regulations, with another event; (3) limit stakes in relation to a participant in more than one game; (4) make different provision for different kinds of game or for games played in different circumstances: s 300(5). In the exercise of the powers under s 300(4), (5), the Secretary of State has made the Gambling Act 2005 (Non-Commercial Equal-Chance Gaming) Regulations 2007, SI 2007/2041, which came into force on 1 September 2007: reg 1. Regulation 3 limits certain payments, amounts or values for the purposes of the Gambling Act 2005 s 300(4) (see notes 25, 30); accordingly, arrangements for gaming must ensure compliance with reg 3 in order to satisfy the condition as set out in head (iii) in the text): see reg 3(1). As to the Secretary of State see PARA 2.

25 Gambling Act 2005 s 300(4)(a). No person is to make, or to be required to make more than one payment (whether by way of a participation fee, stake or other charge) in order to participate in each and every game played at an event, and the payment must not exceed £8: Gambling Act 2005 (Non-Commercial Equal-Chance Gaming) Regulations 2007, SI 2007/2041, reg 3(2). Where two or more events are promoted on the same premises by the same person on the same day, the limits in reg 3(2), and in reg 3(3) (see note 30) apply in relation to those events collectively as if they were a single event: reg 3(4). Where a series of events is held, other than in circumstances where reg 3(4) applies, the limit in reg 3(2) applies separately in relation to each event in the series: reg 3(5)(a). 'Event' means a non-commercial event within the meaning of the Gambling Act 2005 s 297 (see PARA 651); and a reference to a game means a game that constitutes non-commercial equal chance gaming within the meaning of Pt 14 (ss 295-302): Gambling Act 2005 (Non-Commercial Equal-Chance Gaming) Regulations 2007, SI 2007/2041, reg 2(1), (2). As to the meaning of 'participation fee' see PARA 370 note 4.

26 Gambling Act 2005 s 300(4)(b); and see note 25.

27 Gambling Act 2005 s 300(4)(c); and see note 25.

28 Gambling Act 2005 s 300(4)(d); and see note 25.

29 Gambling Act 2005 s 300(4)(e).

30 Gambling Act 2005 s 300(4)(e). Subject to the Gambling Act 2005 (Non-Commercial Equal-Chance Gaming) Regulations 2007, SI 2007/2041, reg 3(5)(b) (see head (2) below), in respect of all games played at an event the aggregate amount or value of prizes and awards distributed in respect of those games must not exceed £600: reg 3(3). See also reg 3(4), cited in note 25. Where a series of events is held, other than in circumstances where reg 3(4) applies: (1) the limit in reg 3(3) applies separately in relation to each event in the series; and (2) in respect of all games played at a final event the amount or value of prizes and awards distributed in respect of those games must not exceed £900: reg 3(5). For these purposes, an event is a final event if (a) no other event is promoted on the same premises by the same person on the same day as that on which the event takes place; and (b) each person taking part in the event is qualified to do so by reason of having taken part in games played at another event of the series held on a previous day: reg 3(6).

31 Gambling Act 2005 s 300(5).

32 Gambling Act 2005 s 300(6).

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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653. Misusing profits of non-commercial prize gaming.

A person commits an offence if he uses any part of the profits¹ of non-commercial prize gaming² or non-commercial equal chance gaming³ in respect of which a fund-raising purpose has been specified⁴ for a purpose other than that specified⁵.

1 The reference in the text to the use of profits includes a reference to permitting profits to be used: Gambling Act 2005 s 301(3). As to the meaning of 'profits' see PARA 652 notes 14, 22 (definitions applied by s 301(6)).

2 As to the meaning of 'non-commercial gaming' see PARA 651; and as to the meaning of 'prize gaming' see PARA 592.

3 As to the meaning of 'equal chance gaming' see PARA 311 note 4.

4 As mentioned in the Gambling Act 2005 s 299(2) or, as the case may be, s 300(2): see PARA 652 at heads (1), (i).

5 See the Gambling Act 2005 s 301(1), (2). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or a fine not exceeding level 5 on the standard scale, or to both: s 301(4). As to the standard scale see PARA 17 note 21. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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C. EXCEPTIONS WITH REGARD TO GAMING MACHINES

654. Exception from certain offences where individual cannot win prize.

A person does not commit an offence of unlawfully using premises¹ for gambling² or unlawfully making a gaming machine³ available for use⁴ if he makes a gaming machine available for use by an individual, and the individual does not, by using the machine, acquire an opportunity to win a prize⁵.

The Secretary of State⁶ may make regulations creating exceptions from the offence of unlawfully manufacturing, supplying, installing, adapting, maintaining or repairing a gaming machine⁷ in connection with machines which, by virtue of their nature or any other specified matter, are not designed or expected to be used to provide an opportunity to win a prize⁸.

1 As to the meaning of 'premises' see PARA 311 note 5.

2 Is an offence under the Gambling Act 2005 s 37: see PARA 616. As to the meaning of 'gambling' see PARA 308.

3 As to the meaning of 'gaming machine' see PARA 547.

4 Is an offence under the Gambling Act 2005 s 242: see PARA 638.

5 See the Gambling Act 2005 s 248(1). As to the meaning of 'prize' see PARA 548 note 10. As to the territorial application of s 248 see PARA 553 note 3.

6 As to the Secretary of State see PARA 2.

7 Is an offence under the Gambling Act 2005 s 243: see PARA 639.

8 See the Gambling Act 2005 s 248(2). At the date at which this volume states the law, no such regulations had been made.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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655. Exception from certain offences where prize is limited.

A person does not commit an offence of unlawfully using premises¹ for gambling² or unlawfully making a gaming machine³ available for use⁴ if he makes a gaming machine available for use by an individual, and the individual does not, by using the machine, acquire an opportunity to win a prize⁵ of a value in excess of the amount that he pays⁶ for or in connection with his use of the machine⁷.

1 As to the meaning of 'premises' see PARA 311 note 5.

2 Is an offence under the Gambling Act 2005 s 37: see PARA 616. As to the meaning of 'gambling' see PARA 308.

3 As to the meaning of 'gaming machine' see PARA 547.

4 Is an offence under the Gambling Act 2005 s 242: see PARA 638.

5 As to the meaning of 'prize' see PARA 548 note 10.

6 For these purposes: (1) the reference to paying includes a reference to (a) paying money by way of an entrance charge; (b) using a coin to activate a gaming machine where the coin will not or may not be returned; (c) transferring money's worth; and (d) paying for goods or services at a price or rate which reflects the opportunity to use a gaming machine; and (2) it is immaterial (a) to whom payment is made; and (b) who receives benefit from the payment: Gambling Act 2005 s 249(2).

7 See the Gambling Act 2005 s 249(1). As to the territorial application of s 249 see PARA 553 note 3.

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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656. Single-machine supply and maintenance permits.

A person does not commit an offence of unlawfully providing facilities for gambling¹ or an offence of unlawfully manufacturing, supplying, installing, adapting, maintaining or repairing a gaming machine² by reason only of the fact that he supplies³, repairs, installs⁴ or maintains a gaming machine or part of a gaming machine⁵ in accordance with a permit under the following provisions⁶.

A person may apply to the Gambling Commission⁷ for a permit authorising him to supply, repair, install or maintain a gaming machine or part of a gaming machine⁸. Such an application must:

- 2269 (1) be made in writing;
- 2270 (2) specify the gaming machine or part in relation to which the permit is sought;
- 2271 (3) give such details of the activity in relation to which the permit is sought as the Commission may direct;
- 2272 (4) be in such form, and contain such other information, as the Commission may direct; and
- 2273 (5) be accompanied by the prescribed fee⁹.

On consideration of such an application the Commission may either grant the application and issue a permit to the applicant, or refuse the application¹⁰. The Commission may grant such an application only if it is satisfied that the licensing objectives¹¹ are irrelevant to the activity for which the permit is sought¹².

A permit under these provisions must specify:

- 2274 (a) a period, not exceeding one year, during which it has effect;
- 2275 (b) the machine or part to which it relates; and
- 2276 (c) the activities which it authorises¹³;

and it may be subject to a condition attached by the Commission¹⁴.

1 le an offence under the Gambling Act 2005 s 33: see PARA 615. As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

2 le an offence under the Gambling Act 2005 s 243(1): see PARA 639. As to the meaning of 'gaming machine' see PARA 547.

3 As to the meaning of 'supply' see PARA 349 note 17.

4 As to the meaning of 'installing part of a gaming machine' see PARA 560 note 3.

5 As to the meaning of 'part of a gaming machine' see PARA 553 note 3.

6 Gambling Act 2005 s 250(1). As to the territorial application of s 250 see PARA 553 note 3.

7 As to the Gambling Commission see PARA 4.

8 Gambling Act 2005 s 250(2).

9 Gambling Act 2005 s 250(3). 'Prescribed' means prescribed by regulations made by the Secretary of State: s 250(8). As to the Secretary of State see PARA 2. The fee to accompany an application for a permit under s 250(2) is £25: Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006, SI 2006/3284, reg 27.

10 Gambling Act 2005 s 250(4).

11 As to the licensing objectives see PARA 331.

12 Gambling Act 2005 s 250(5).

13 Gambling Act 2005 s 250(6). As to the meaning of 'authorise' see PARA 349 note 5.

14 Gambling Act 2005 s 250(7).

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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657. Other permits.

The holder of a family entertainment centre gaming machine permit¹, licensed premises gaming machine permit², club gaming permit³ or club machine permit⁴ does not commit an offence of unlawfully using premises⁵ for gambling⁶ or unlawfully making a gaming machine⁷ available for use⁸ if he makes a gaming machine available for use in accordance with the permit in question⁹. Nor does the holder of a club gaming permit commit an offence of unlawfully providing facilities for gambling¹⁰ if he makes a gaming machine available for use in accordance with that permit¹¹.

1 As to the meaning of 'family entertainment centre gaming machine permit' see PARA 562.

2 As to the meaning of 'licensed premises gaming machine permit' see PARA 570.

3 As to the meaning of 'club gaming permit' see PARA 581.

4 As to the meaning of 'club machine permit' see PARA 582.

5 As to the meaning of 'premises' see PARA 311 note 5.

6 Is an offence under the Gambling Act 2005 s 37: see PARA 616. As to the meaning of 'gambling' see PARA 308.

7 As to the meaning of 'gaming machine' see PARA 547.

8 Is an offence under the Gambling Act 2005 s 242: see PARA 638.

9 See the Gambling Act 2005 s 247(1); and PARA 562; s 283(1); and PARA 570; s 271(1); and PARA 581; s 273(3); and PARA 582.

10 Is an offence under the Gambling Act 2005 s 33: see PARA 615. As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

11 See the Gambling Act 2005 s 271(1); and PARA 581.

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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658. Other exceptions.

There are additional exceptions with regard to gaming machines in pubs¹ and as part of a travelling fair².

1 See the Gambling Act 2005 s 282; and PARA 669.

2 See the Gambling Act 2005 s 287; and PARA 673.

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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D. EXEMPT LOTTERIES

659. Incidental non-commercial lotteries.

A lottery¹ is exempt from the requirement for an operating licence² if it is incidental to a non-commercial event ('the connected event'), and the specified conditions³ are satisfied⁴; and such a lottery is referred to as an incidental non-commercial lottery⁵. An event is non-commercial if no sum raised by the organisers of the event, whether by way of fees for entrance or for participation, by way of sponsorship, by way of commission from traders or otherwise, is appropriated for the purpose of private gain⁶.

The specified conditions are as follows:

- 2277 (1) the promoters⁷ of an incidental non-commercial lottery may not deduct from the proceeds of the lottery⁸ more than the prescribed sum⁹ in respect of the cost of the prizes¹⁰, irrespective of their actual cost¹¹;
- 2278 (2) the promoters of an incidental non-commercial lottery may not deduct from the proceeds of the lottery more than the prescribed sum¹² in respect of costs incurred in organising the lottery, irrespective of the amount of the costs incurred¹³;
- 2279 (3) an incidental non-commercial lottery must be promoted¹⁴ wholly for a purpose other than that of private gain¹⁵;
- 2280 (4) the arrangements for an incidental non-commercial lottery must not include a rollover¹⁶;
- 2281 (5) no lottery ticket¹⁷ for an incidental non-commercial lottery may be sold or supplied¹⁸ otherwise than on the premises on which the connected event takes place, and while the connected event is taking place¹⁹;
- 2282 (6) the results of the lottery must be made public while the connected event is taking place²⁰.

1 As to the meaning of 'lottery' see PARA 317.

2 It is exempt for the purposes of the Gambling Act 2005 s 258 (unlawful promotion of lottery): see PARA 643. As to the meaning of 'operating licence' see PARA 349 note 2.

3 It is the conditions specified in the Gambling Act 2005 Sch 11 Pt 1 (paras 1-8). As to those conditions see heads (1)-(6) in the text.

4 Gambling Act 2005 Sch 11 para 1(1).

5 Gambling Act 2005 Sch 11 para 1(2).

6 Gambling Act 2005 Sch 11 para 2. As to the meaning of 'private gain' see PARA 377 note 2.

7 As to the persons who promote a lottery see PARA 643.

8 As to the meaning of 'proceeds of a lottery' see PARA 378 note 8.

9 For these purposes, 'prescribed' means prescribed by the Secretary of State by regulations: Gambling Act 2005 Sch 11 para 8. As to the Secretary of State see PARA 2. In respect of the cost of the prizes awarded in the lottery the promoters may deduct no more than £500: Gambling Act 2005 (Incidental Non-Commercial Lotteries) Regulations 2007, SI 2007/2040, reg 2(1), (2).

- 10 As to the meaning of 'prize' see PARA 317 note 4.
- 11 Gambling Act 2005 Sch 11 para 3.
- 12 In respect of the costs incurred in organising the lottery the promoters may deduct no more than £100: Gambling Act 2005 (Incidental Non-Commercial Lotteries) Regulations 2007, SI 2007/2040, reg 2(1), (3).
- 13 Gambling Act 2005 Sch 11 para 4.
- 14 As to the meaning of 'promoting a lottery' see PARA 643.
- 15 Gambling Act 2005 Sch 11 para 5.
- 16 Gambling Act 2005 Sch 11 para 6. As to the meaning of 'rollover' see PARA 377 note 14.
- 17 As to the meaning of 'lottery ticket' see PARA 377 note 8.
- 18 As to the meaning of 'sale or supply of a lottery ticket' see PARA 484 note 9.
- 19 Gambling Act 2005 Sch 11 para 7(1).
- 20 Gambling Act 2005 Sch 11 para 7(2).

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560-689 Power to make regulations ... Consultation with the Gambling Commission

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660. Private lotteries.

A lottery¹ is exempt from the requirement for an operating licence² if it is a private society lottery, a work lottery or a residents' lottery, and the other specified conditions³ are satisfied⁴.

A lottery is a private society lottery if it is promoted⁵ only by authorised members⁶ of a society⁷, and each person to whom a ticket⁸ is sold is either a member of the society or on premises⁹ wholly or mainly used for the administration of the society or the conduct of its affairs ('society premises')¹⁰.

A lottery is a work lottery if the promoters¹¹ work on a single set of premises ('the work premises')¹², and each person to whom a ticket is sold or supplied¹³ also works on the work premises¹⁴.

A lottery is a residents' lottery if the promoters live in a single set of premises ('the residential premises')¹⁵, and each person to whom a ticket is sold or supplied also lives in the residential premises¹⁶.

The other specified conditions are as follows:

- 2283 (1) a private society lottery may be promoted for any of the purposes for which the society is conducted¹⁷;
- 2284 (2) a work lottery or residents' lottery must be organised in such a way as to ensure that no profits are made¹⁸;
- 2285 (3) no advertisement¹⁹ for a private society lottery may be displayed²⁰ or distributed²¹ except on the society premises, or sent to any other premises²²;
- 2286 (4) no advertisement for a work lottery may be displayed or distributed except on the work premises, or sent to any other premises²³;
- 2287 (5) no advertisement for a residents' lottery may be displayed or distributed except on the residential premises, or sent to any other premises²⁴;
- 2288 (6) each ticket in a private lottery must²⁵ be a document²⁶;
- 2289 (7) a ticket in a private lottery may be sold or supplied only by or on behalf of the promoters²⁷;
- 2290 (8) the rights conferred by the sale or supply of a ticket in a private lottery are not to be transferable, and any purported transfer must be treated by the promoters of the lottery as being ineffective²⁸;
- 2291 (9) each ticket in a private lottery:
 - 159 253. (a) must state the name and an address of each of the promoters of the lottery;
 - 254. (b) must specify the class of persons to whom the promoters are willing to sell or supply tickets; and
 - 255. (c) must explain the condition in head (8) above²⁹;
- 160 2292 (10) the price payable for each ticket in a private lottery:
 - 161 256. (a) must be the same;
 - 257. (b) must be shown on the ticket; and

258. (c) must be paid to the promoters of the lottery before any person is given the ticket or any right in respect of membership of the class among whom prizes³⁰ are to be allocated³¹;

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2293 (11) the arrangements for a private lottery must not include a rollover³².

Nothing in the above provisions applies to anything done on a vessel³³.

1 As to the meaning of 'lottery' see PARA 317.

2 It is exempt for the purposes of the Gambling Act 2005 s 258 (unlawful promotion of lottery): see PARA 643. As to the meaning of 'operating licence' see PARA 349 note 2.

3 It is the other conditions specified in the Gambling Act 2005 Sch 11 Pt 2 (paras 9-19). As to the specified conditions see heads (1)-(11) in the text.

4 Gambling Act 2005 Sch 11 para 9(1). In Sch 11 Pt 2, a reference to a private lottery is a reference to a private society lottery, a work lottery or a residents' lottery: Gambling Act 2005 Sch 11 para 9(2).

5 As to the meaning of 'promoting a lottery' see PARA 643.

6 For these purposes, 'authorised' means authorised in writing by the society or, if it has one, its governing body (Gambling Act 2005 Sch 11 para 10(2)); and 'society' means any group or society established and conducted for purposes not connected with gambling (Sch 11 para 10(3)). As to the meaning of 'society' generally see PARA 377 note 2; and as to the meaning of 'gambling' see PARA 308.

7 In relation to a society which has branches or sections, the reference to a society in the text is a reference to a single branch or section: Gambling Act 2005 Sch 11 para 10(3).

8 As to the meaning of 'lottery ticket' see PARA 377 note 8.

9 As to the meaning of 'premises' see PARA 311 note 5.

10 Gambling Act 2005 Sch 11 para 10(1).

11 As to the persons who promote a lottery see PARA 643.

12 For these purposes, a person works on premises if he (1) is employed under a contract of employment to work at or from the premises; (2) undertakes to work at or from the premises (whether or not for remuneration); or (3) conducts a business at or from the premises: Gambling Act 2005 Sch 11 para 11(2). 'Business' includes trade and profession: Sch 11 para 62.

13 As to the meaning of 'sale or supply of a lottery ticket' see PARA 484 note 9.

14 Gambling Act 2005 Sch 11 para 11(1).

15 For these purposes, a person lives in premises if he habitually resides in any part of the premises (whether or not there are other premises in which he also habitually resides): Gambling Act 2005 Sch 11 para 12(2).

16 Gambling Act 2005 Sch 11 para 12(1).

17 Gambling Act 2005 Sch 11 para 13(1).

18 Gambling Act 2005 Sch 11 para 13(2). As to the meaning of 'profits of a lottery' see PARA 645 note 2.

19 In the Gambling Act 2005 Sch 11, 'advertisement', in relation to a lottery, includes any document, or electronic communication, announcing that a lottery will take place or inviting people to participate in a lottery (in either case whether or not it also gives other information): Sch 11 para 61(1)(a). As to the meaning of 'advertising' generally see s 327; and PARA 677.

20 In the Gambling Act 2005 Sch 11, a reference to displaying an advertisement includes a reference to publishing a notice: Sch 11 para 61(1)(b).

- 21 For the purposes of the Gambling Act 2005 Sch 11, in the case of an advertisement in the form of an electronic communication, the communication is to be treated as being distributed to any place at which a person can access it, and sent to any premises at which a person can access it: Sch 11 para 61(1)(c).
- 22 Gambling Act 2005 Sch 11 para 14(1).
- 23 Gambling Act 2005 Sch 11 para 14(2).
- 24 Gambling Act 2005 Sch 11 para 14(3).
- 25 le without prejudice to the Gambling Act 2005 s 253 (see PARA 377 note 8): Sch 11 para 15.
- 26 Gambling Act 2005 Sch 11 para 15.
- 27 Gambling Act 2005 Sch 11 para 16(1).
- 28 Gambling Act 2005 Sch 11 para 16(2).
- 29 Gambling Act 2005 Sch 11 para 17.
- 30 As to the meaning of 'prize' see PARA 317 note 4.
- 31 Gambling Act 2005 Sch 11 para 18.
- 32 Gambling Act 2005 Sch 11 para 19. As to the meaning of 'rollover' see PARA 377 note 14.
- 33 Gambling Act 2005 Sch 11 para 63. As to the meaning of 'vessel' see PARA 311 note 5.

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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661. Customer lotteries.

A lottery¹ is exempt from the requirement for an operating licence² if:

- 2294 (1) it is promoted³ by a person ('the promoter')⁴ who occupies premises in Great Britain⁵ in the course of a business⁶ ('the business premises');
- 2295 (2) no ticket⁷ in the lottery is sold or supplied⁸ to a person except at a time when he is on the business premises as a customer of the promoter; and
- 2296 (3) the other specified conditions of a customer lottery⁹ are satisfied¹⁰;

and such a lottery is referred to as a customer lottery¹¹.

The other specified conditions are as follows:

- 2297 (a) a customer lottery must be organised in such a way as to ensure that no profits¹² are made¹³;
- 2298 (b) no advertisement¹⁴ for a customer lottery may be displayed¹⁵ or distributed¹⁶ except on the business premises, or sent to any other premises¹⁷;
- 2299 (c) each ticket in a customer lottery must¹⁸ be a document¹⁹;
- 2300 (d) a ticket in a customer lottery may be sold or supplied only by or on behalf of the promoter²⁰;
- 2301 (e) the rights conferred by the sale or supply of a ticket in a customer lottery are not to be transferable, and any purported transfer must be treated by the promoter of the lottery as being ineffective²¹;
- 2302 (f) each ticket in a customer lottery:
 - 163 259. (i) must state the name and an address of the promoter of the lottery;
 - 260. (ii) must specify the class of persons to whom the promoter is willing to sell or supply tickets; and
 - 261. (iii) must explain the condition in head (e) above²²;
- 164 2303 (g) the price payable for each ticket in a customer lottery:
 - 165 262. (i) must be the same;
 - 263. (ii) must be shown on the ticket; and
 - 264. (iii) must be paid to the promoter of the lottery before any person is given the ticket or any right in respect of membership of the class among whom prizes²³ are to be allocated²⁴;
- 166 2304 (h) it must not be possible for the purchaser of a ticket in a customer lottery to win by virtue of that ticket more than £50, whether in money, money's worth, or partly the one and partly the other²⁵;
- 2305 (i) the arrangements for a customer lottery must not include a rollover²⁶;
- 2306 (j) a draw²⁷ in a customer lottery must not take place during a period of seven days beginning with a previous draw in that customer lottery, or in another customer lottery promoted on the business premises²⁸.

- 1 As to the meaning of 'lottery' see PARA 317.
- 2 le it is exempt for the purposes of the Gambling Act 2005 s 258 (unlawful promotion of lottery): see PARA 643. As to the meaning of 'operating licence' see PARA 349 note 2.
- 3 As to the meaning of 'promoting a lottery' see PARA 643.
- 4 For these purposes, it is immaterial whether persons other than the person who occupies the business premises also perform activities which amount to promotion of the lottery in accordance with the Gambling Act 2005 s 252 (see PARA 643); but a reference in Sch 11 Pt 3 (paras 20-29) (see the text and notes 1-3, 5-28) to the promoter does not include a reference to any of those other persons: Sch 11 para 20(3). As to the persons who promote a lottery see also PARA 643.
- 5 As to the meaning of 'premises' see PARA 311 note 5; and as to the meaning of 'Great Britain' see PARA 16 note 8.
- 6 As to the meaning of 'business' see PARA 660 note 12.
- 7 As to the meaning of 'lottery ticket' see PARA 377 note 8.
- 8 As to the meaning of 'sale or supply of lottery tickets' see PARA 484 note 9.
- 9 le the other conditions specified in the Gambling Act 2005 Sch 11 Pt 3. As to the other specified conditions see heads (a)-(j) in the text.
- 10 Gambling Act 2005 Sch 11 para 20(1).
- 11 Gambling Act 2005 Sch 11 para 20(2).
- 12 As to the meaning of 'profits of a lottery' see PARA 645 note 2.
- 13 Gambling Act 2005 Sch 11 para 21.
- 14 As to the meaning of 'advertisement' see PARA 660 note 19.
- 15 As to the meaning of 'displayed' see PARA 660 note 20.
- 16 As to the meaning of 'distributed or sent' see PARA 660 note 21.
- 17 Gambling Act 2005 Sch 11 para 22.
- 18 le without prejudice to the Gambling Act 2005 s 253 (see PARA 377 note 8): Sch 11 para 23.
- 19 Gambling Act 2005 Sch 11 para 23.
- 20 Gambling Act 2005 Sch 11 para 24(1).
- 21 Gambling Act 2005 Sch 11 para 24(2).
- 22 Gambling Act 2005 Sch 11 para 25.
- 23 As to the meaning of 'prize' see PARA 317 note 4.
- 24 Gambling Act 2005 Sch 11 para 26.
- 25 Gambling Act 2005 Sch 11 para 27. The Secretary of State has power to vary the sum in the text: see Sch 11 para 60; and PARA 664. As to the Secretary of State see PARA 2.
- 26 Gambling Act 2005 Sch 11 para 28. As to the meaning of 'rollover' see PARA 377 note 14.
- 27 As to the meaning of 'draw' see PARA 377 note 14.
- 28 Gambling Act 2005 Sch 11 para 29.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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662. Small society lotteries.

A lottery¹ is exempt from the requirement for an operating licence² if:

- 2307 (1) it is promoted³ wholly on behalf of a non-commercial society⁴ ('the promoting society');
- 2308 (2) it is a small lottery; and
- 2309 (3) the other specified conditions of a small society lottery⁵ are satisfied⁶;

and a lottery promoted wholly on behalf of a non-commercial society is referred to as a small society lottery⁷. For these purposes, a society lottery is a small lottery unless it is a large lottery by virtue of any of heads (a) to (d) below⁸. A society lottery is a large lottery if:

- 2310 (a) the arrangements for it are such that its proceeds⁹ may exceed £20,000¹⁰;
- 2311 (b) it is promoted wholly or partly at a time in a calendar year at which the aggregate of the promoting society's proceeds from society lotteries promoted wholly or partly during that year exceeds £250,000¹¹;
- 2312 (c) the arrangements for it are such that, disregarding any other society lottery the sale of tickets¹² for which is not concluded, it may during its promotion become a large lottery by virtue of head (b) above¹³;
- 2313 (d) a society promotes a lottery that is a large society lottery by virtue of heads (a), head (b) or head (c) above ('the first lottery'), in which case any other society lottery promoted by that society which is wholly or partly promoted after the beginning of the promotion of the first lottery and in a calendar year during which the first lottery is wholly or partly promoted, or in any of the three calendar years successively following the last calendar year during which the first lottery was wholly or partly promoted, is a large lottery¹⁴.

The other specified conditions are as follows:

- 2314 (i) a small society lottery may be promoted for any of the purposes for which the promoting society is conducted¹⁵;
- 2315 (ii) the arrangements for a small society lottery must ensure that at least 20 per cent of the proceeds of the lottery are applied to a purpose for which the society is conducted¹⁶;
- 2316 (iii) it must not be possible for the purchaser of a ticket in a small society lottery to win by virtue of that ticket, whether in money, money's worth, or partly the one and partly the other, more than £25,000¹⁷;
- 2317 (iv) subject to head (iii) above, the arrangements for a small society lottery may include a rollover¹⁸ only if each other lottery which may be affected by the rollover is a small society lottery promoted by or on behalf of the same society¹⁹;
- 2318 (v) where a person purchases a lottery ticket in a small society lottery he must receive a document²⁰ which:

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- 265. (A) identifies the promoting society;
- 266. (B) states the price of the ticket;

267. (c) states the name and an address of a member of the society who is designated, by persons acting on behalf of the society, as having responsibility within the society for the promotion of the lottery, or if there is one, the external lottery manager²¹; and
268. (d) either states the date of the draw²², or each draw, in the lottery, or enables the date of the draw, or each draw, in the lottery to be determined²³;
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- 2319 (vi) the price payable for each ticket in a small society lottery must be the same, and must be paid to the promoter of the lottery before any person is given the ticket or any right in respect of membership of the class among whom prizes²⁴ are to be allocated²⁵;
- 2320 (vii) membership of the class among whom prizes in a small society lottery are allocated may not be dependent on making any payment, apart from payment of the price of a ticket²⁶;
- 2321 (viii) the promoting society of a small society lottery must, throughout the period during which the lottery is promoted, be registered²⁷ with a local authority²⁸;
- 2322 (ix) the promoting society of a small society lottery must send to the local authority with which the society is registered²⁹ a statement of the specified matters³⁰, during the period of three months beginning with the day on which the draw, or the last draw, in the lottery takes place³¹;
- 2323 (x) the statement described in head (ix) above must be signed by two adult³² members of the society who are appointed for the purpose in writing by the society or, if it has one, its governing body, and must be accompanied by a copy of that appointment³³.

If after receiving a statement under heads (ix) and (x) above a local authority thinks that the lottery to which the statement relates was a large lottery, the authority must notify³⁴ the Gambling Commission³⁵ in writing³⁶. Such a notice must be accompanied by a copy of the statement relating to the lottery, and of the statement relating to any other lottery as a result of which that lottery is a large lottery³⁷.

Where a statement is sent to a local authority³⁸ under heads (ix) and (x) above, the authority must retain it for at least 18 months³⁹ and make it available for inspection by members of the public at all reasonable times⁴⁰. The authority must also make arrangements for the provision of a copy of it or part of it to any member of the public on request⁴¹; but a local authority may refuse to provide access or a copy unless the person seeking access or a copy pays a fee specified by the authority⁴².

1 As to the meaning of 'lottery' see PARA 317.

2 Ie it is exempt for the purposes of the Gambling Act 2005 s 258 (unlawful promotion of lottery): see PARA 643. As to the meaning of 'operating licence' see PARA 349 note 2.

3 As to the meaning of 'promoting a lottery' see PARA 643.

4 As to the meaning of 'non-commercial society' see PARA 377 note 2.

5 Ie other the conditions specified in the Gambling Act 2005 Sch 11 Pt 4 (paras 30-39). As to the other specified conditions see heads (i)-(x) in the text.

6 Gambling Act 2005 Sch 11 para 30(1).

7 Gambling Act 2005 Sch 11 para 30(2).

8 Gambling Act 2005 Sch 11 para 31(1).

9 As to the meaning of 'proceeds of a lottery' see PARA 378 note 8.

- 10 Gambling Act 2005 Sch 11 para 31(2). The Secretary of State has power to vary the sum in the text: see Sch 11 para 60; and PARA 664. As to the Secretary of State see PARA 2.
- 11 Gambling Act 2005 Sch 11 para 31(3); and see note 10.
- 12 As to the meaning of 'lottery ticket' see PARA 377 note 8.
- 13 Gambling Act 2005 Sch 11 para 31(4).
- 14 See the Gambling Act 2005 Sch 11 para 31(5).
- 15 Gambling Act 2005 Sch 11 para 32.
- 16 Gambling Act 2005 Sch 11 para 33. The Secretary of State has power to vary the percentage in the text: see Sch 11 para 60; and PARA 664.
- 17 Gambling Act 2005 Sch 11 para 34; and see note 10.
- 18 As to the meaning of 'rollover' see PARA 377 note 14.
- 19 Gambling Act 2005 Sch 11 para 35(1), (2).
- 20 For these purpose, a reference to a person receiving a document includes, in particular, a reference to a message being sent or displayed to him electronically in a manner which enables him to retain the message electronically, or to print it: Gambling Act 2005 Sch 11 para 36(2).
- 21 As to the meaning of 'external lottery manager' see PARA 377 note 4.
- 22 As to the meaning of 'draw' see PARA 377 note 14.
- 23 Gambling Act 2005 Sch 11 para 36(1).
- 24 As to the meaning of 'prize' see PARA 317 note 4.
- 25 Gambling Act 2005 Sch 11 para 37(1).
- 26 Gambling Act 2005 Sch 11 para 37(2).
- 27 Ie in accordance with the Gambling Act 2005 Sch 11 Pt 5 (paras 41-56): see PARA 663.
- 28 Gambling Act 2005 Sch 11 para 38.
- 29 Ie under the Gambling Act 2005 Sch 11 Pt 5.
- 30 Gambling Act 2005 Sch 11 para 39(1). The specified matters are as follows (Sch 11 para 39(2)), ie:
 - 125 (1) the arrangements for the lottery (including the dates on which tickets were available for sale or supply, the dates of any draw and the arrangements for prizes (including any rollover);
 - 126 (2) the proceeds of the lottery;
 - 127 (3) the amounts deducted by the promoters of the lottery in respect of the provision of prizes (including the provision of prizes in accordance with any rollover);
 - 128 (4) the amounts deducted by the promoters of the lottery in respect of other costs incurred in organising the lottery;
 - 129 (5) any amount applied to a purpose for which the promoting society is conducted; and
 - 130 (6) whether any expenses in connection with the lottery were defrayed otherwise than by deduction from proceeds, and, if they were, the amount of the expenses and the sources from which they were defrayed.
- 31 Gambling Act 2005 Sch 11 para 39(3).
- 32 As to the meaning of 'adult' see PARA 372 note 7.
- 33 See the Gambling Act 2005 Sch 11 para 39(4), (5).

34 As to the method of notification see PARA 356 note 5.

35 As to the Gambling Commission see PARA 4.

36 Gambling Act 2005 Sch 11 para 40(1).

37 Gambling Act 2005 Sch 11 para 40(2).

38 For these purposes, 'local authority' means (1) in relation to England, a district council, a county council for a county in which there are no district councils, a London borough council, the Common Council of the City of London and the Council of the Isles of Scilly; (2) in relation to Wales, a county council and a county borough council: Gambling Act 2005 Sch 11 para 41(a), (b).

39 Gambling Act 2005 Sch 11 para 55(1)(a).

40 Gambling Act 2005 Sch 11 para 55(1)(b).

41 Gambling Act 2005 Sch 11 para 55(1)(c).

42 Gambling Act 2005 Sch 11 para 55(2). A local authority may not specify a fee under Sch 11 para 55(2) which exceeds the reasonable cost of providing the service sought (but in calculating the cost of providing a service to a person the authority may include a reasonable share of expenditure which is referable only indirectly to the provision of that service): Sch 11 para 55(3).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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663. Registration of promoting society with local authority.

A society¹ may apply to the relevant local authority² for registration³ for the statutory purposes⁴. Such an application:

- 2324 (1) must be in the prescribed form⁵;
- 2325 (2) must specify the purposes for which the society is conducted⁶;
- 2326 (3) must contain such other information, and be accompanied by such documents, as may be prescribed⁷; and
- 2327 (4) must be accompanied by the prescribed fee⁸.

As soon as is reasonably practicable after receipt of such an application a local authority must, unless registration is refused⁹:

- 2328 (a) enter the applicant, together with such information as may be prescribed¹⁰, in a register kept by the authority for these purposes;
- 2329 (b) notify¹¹ the applicant of his registration; and
- 2330 (c) notify the Gambling Commission¹² of the registration¹³;

and as soon as is reasonably practicable after receipt of notice of a registration under head (c) above the Commission must record the registration¹⁴.

A local authority must refuse an application for registration if, in the period of five years ending with the date of the application, an operating licence¹⁵ held by the applicant for registration has been revoked¹⁶ or an application for an operating licence made by the applicant for registration has been refused¹⁷. A local authority may refuse an application for registration if the authority thinks that:

- 2331 (i) the applicant is not a non-commercial society¹⁸;
- 2332 (ii) a person who will or may be connected with the promotion of the lottery¹⁹ has been convicted of a relevant offence²⁰; or
- 2333 (iii) information provided in or with the application for registration is false or misleading²¹.

A local authority may not, however, refuse an application for registration unless the authority has given the applicant an opportunity to make representations²².

A local authority may revoke a registration²³ if the authority thinks that it would be obliged or permitted to refuse an application for the registration were it being made anew²⁴. Where a local authority revokes such a registration the authority must specify that the revocation takes effect either immediately, or at the end of such period, beginning with the day of the revocation and not exceeding two months, as the authority may specify²⁵. A local authority may not, however, revoke a registration unless the authority has given the registered society an opportunity to make representations²⁶.

If a local authority refuses or revokes registration the authority must notify the applicant society or the formerly registered society as soon as is reasonably practicable, and the society may appeal to a magistrates' court²⁷. Such an appeal must be instituted:

- 2334 (A) in a magistrates' court for a local justice area which is wholly or partly within the area of the local authority against whose decision the appeal is brought;
- 2335 (B) by notice of appeal given to the designated officer; and
- 2336 (C) in the period of 21 days beginning with the day on which the society is notified of the refusal or revocation of registration²⁸.

On such an appeal a magistrates' court may either affirm or reverse the local authority's decision and may make any other order, which may include transitional provision²⁹.

A registered society may apply in writing to the registering authority for the registration to be cancelled³⁰. As soon as is reasonably practicable after receipt of such an application a local authority must cancel the registration, notify the formerly registered society of the cancellation, and notify the Commission of the cancellation³¹.

A registered society must pay an annual fee to the registering local authority³². An annual fee must be paid within such period before each anniversary of the registration as may be prescribed³³, and must be of the prescribed amount³⁴. If a registered society fails to comply with this requirement, the registering authority may cancel the society's registration³⁵, in which case the authority must as soon as is reasonably practicable notify the formerly registered society and the Commission³⁶.

1 As to the meaning of 'society' see PARA 377 note 2.

2 In relation to the registration of a society, the relevant local authority is the local authority for the area in which the principal premises of the society are situated: Gambling Act 2005 Sch 11 para 43. As to the meaning of 'local authority' see PARA 662 note 38; and as to the meaning of 'premises' see PARA 311 note 5.

3 I.e. registration under the Gambling Act 2005 Sch 11 Pt 5 (paras 41-56). As to the necessity for registration see Sch 11 para 38; and PARA 662 at head (viii).

4 Gambling Act 2005 Sch 11 para 42(1).

5 Gambling Act 2005 Sch 11 para 42(2)(a). 'Prescribed' means prescribed by the Secretary of State by regulations: Sch 11 para 56. As to the Secretary of State see PARA 2.

For the prescribed form of application see the Small Society Lotteries (Registration of Non-commercial Societies) Regulations 2007, SI 2007/2328, reg 3(1)(a), (2), (3), Schedule.

6 Gambling Act 2005 Sch 11 para 42(2)(b).

7 Gambling Act 2005 Sch 11 para 42(2)(c).

8 Gambling Act 2005 Sch 11 para 42(2)(d). The prescribed fee is £40: Small Society Lotteries (Registration of Non-commercial Societies) Regulations 2007, SI 2007/2328, reg 3(1)(b).

9 I.e. subject to the Gambling Act 2005 Sch 11 paras 47, 48: see the text and notes 15-21.

10 When entering an applicant in the register, the local authority must include with the entry the date on which that entry is made: Small Society Lotteries (Registration of Non-commercial Societies) Regulations 2007, SI 2007/2328, reg 4.

11 As to the method of notification see PARA 356 note 5.

12 As to the Gambling Commission see PARA 4.

13 Gambling Act 2005 Sch 11 para 44. A notice under head (c) in the text must be accompanied by such part of the application fee accompanying the application under Sch 11 para 42 as may be prescribed: Sch 11 para 46(1), (2).

- 14 Gambling Act 2005 Sch 11 para 45.
- 15 As to the meaning of 'operating licence' see PARA 349 note 2.
- 16 Ie under the Gambling Act 2005 s 119(1): see PARA 397.
- 17 Gambling Act 2005 Sch 11 para 47.
- 18 As to the meaning of 'non-commercial society' see PARA 377 note 2.
- 19 As to the meaning of 'promoting a lottery' see PARA 643. The lottery referred to in the text is a small society lottery: see PARA 662.
- 20 As to the meaning of 'relevant offence' see PARA 353 note 11.
- 21 Gambling Act 2005 Sch 11 para 48.
- 22 Gambling Act 2005 Sch 11 para 49.
- 23 Ie a registration under the Gambling Act 2005 Sch 11 Pt 5.
- 24 Gambling Act 2005 Sch 11 para 50(1).
- 25 Gambling Act 2005 Sch 11 para 50(2).
- 26 Gambling Act 2005 Sch 11 para 50(3).
- 27 Gambling Act 2005 Sch 11 para 51(1).
- 28 Gambling Act 2005 Sch 11 para 51(2).
- 29 See the Gambling Act 2005 Sch 11 para 51(3).
- 30 Gambling Act 2005 Sch 11 para 52.
- 31 Gambling Act 2005 Sch 11 para 53.
- 32 Gambling Act 2005 Sch 11 para 54(1).
- 33 Gambling Act 2005 Sch 11 para 54(2)(a). The annual fee must be paid within the period of two months which ends immediately before each anniversary of the registration; Small Society Lotteries (Registration of Non-commercial Societies) Regulations 2007, SI 2007/2328, reg 5(b).
- 34 Gambling Act 2005 Sch 11 para 54(2)(b). The prescribed amount is £20: Small Society Lotteries (Registration of Non-commercial Societies) Regulations 2007, SI 2007/2328, reg 5(a).
- 35 Gambling Act 2005 Sch 11 para 54(3).
- 36 See the Gambling Act 2005 Sch 11 para 54(4).

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560-689 Power to make regulations ... Consultation with the Gambling Commission

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664. Secretary of State's power to impose additional restrictions etc.

The Secretary of State¹:

- 2337 (1) may by regulations impose a condition in relation to exempt lotteries² requiring that tickets³ purchased be delivered to the purchaser by hand at the time of purchase and not by post⁴; and such regulations may apply generally, only in relation to a specified class of lottery or only in specified circumstances⁵;
- 2338 (2) may by regulations impose in relation to exempt lotteries conditions or limitations in respect of the use of a rollover⁶, in addition to any conditions or limitations set out in Schedule 11 to the Gambling Act 2005⁷; and such regulations may apply generally, only in relation to a specified class of lottery or only in specified circumstances⁸;
- 2339 (3) may by order impose in relation to a class of lottery a condition, in addition to any specified in that Schedule, with which a lottery must comply if it is to be an exempt lottery⁹; and a condition so imposed may, in particular, relate to:
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- 269. (a) the persons who may sell or supply lottery tickets¹⁰;
 - 270. (b) the persons who may buy lottery tickets;
 - 271. (c) the circumstances in which lottery tickets are sold or supplied;
 - 272. (d) the nature of lottery tickets and information appearing on them;
 - 273. (e) arrangements for advertising¹¹ the lottery;
 - 274. (f) the deductions which promoters¹² may make from the proceeds¹³ of a lottery¹⁴;
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- 2340 (4) may by order restrict the extent to which a person may carry on activities in reliance on an exemption under that Schedule¹⁵; and such an order may, in particular, make provision:
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- 275. (a) restricting the number of lotteries that may be promoted on behalf of a person wholly or partly within a specified period;
 - 276. (b) prescribing a minimum interval between activity in connection with one lottery promoted on behalf of a person and activity in connection with another lottery promoted on behalf of that person¹⁶;
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- 2341 (5) may by order vary a monetary amount or a percentage in that Schedule¹⁷.

Before making an order under head (3) or head (4) above, the Secretary of State must consult the Gambling Commission¹⁸.

1 As to the Secretary of State see PARA 2.

2 As to the meaning of 'exempt lottery' see PARA 643.

3 As to the meaning of 'lottery ticket' see PARA 377 note 8.

4 Gambling Act 2005 Sch 11 para 57(1).

- 5 Gambling Act 2005 Sch 11 para 57(2). At the date at which this volume states the law, no such regulations had been made.
- 6 As to the meaning of 'rollover' see PARA 377 note 14.
- 7 Gambling Act 2005 Sch 11 para 58(1). As to the conditions set out in Sch 11 see PARAS 659-662.
- 8 Gambling Act 2005 Sch 11 para 58(2). At the date at which this volume states the law, no such regulations had been made.
- 9 Gambling Act 2005 Sch 11 para 59(1). At the date at which this volume states the law, no such order had been made.
- 10 As to the meaning of 'sale or supply of lottery tickets' see PARA 484 note 9.
- 11 As to the meaning of 'advertising' see the Gambling Act 2005 s 327; and PARA 677. See also PARA 660 note 19.
- 12 As to the persons who promote a lottery see PARA 643.
- 13 As to the meaning of 'proceeds of a lottery' see PARA 378 note 8.
- 14 Gambling Act 2005 Sch 11 para 59(2). As to the meaning of 'lottery' see PARA 317.
- 15 Gambling Act 2005 Sch 11 para 59(3). At the date at which this volume states the law, no such order had been made.
- 16 Gambling Act 2005 Sch 11 para 59(4).
- 17 Gambling Act 2005 Sch 11 para 60. At the date at which this volume states the law, no such order had been made.
- 18 Gambling Act 2005 Sch 11 para 59(5). As to the Gambling Commission see PARA 4.

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E. EXEMPTIONS FOR CLUBS AND PUBS

(A) CLUBS

665. Exempt gaming.

The statutory provisions creating the offences of unlawfully providing facilities for gambling¹ and unlawfully using premises for gambling² do not apply to the provision of facilities for equal chance gaming³ by:

- 2342 (1) a members' club⁴;
- 2343 (2) a commercial club⁵;
- 2344 (3) a club that would be a members' club but for the fact that it is not established and conducted wholly or mainly for purposes other than the provision of facilities for gaming⁶;
- 2345 (4) a club that would be a commercial club but for the fact that it is not established and conducted wholly or mainly for purposes other than the provision of facilities for gaming⁷; or
- 2346 (5) a miners' welfare institute⁸,

which satisfies the following conditions⁹. The conditions of gaming for these purposes are:

- 2347 (a) that the arrangements for the gaming satisfy the prescribed requirements¹⁰, if any, in relation to amounts that may be staked¹¹ or the amount or value of a prize¹²;
- 2348 (b) that no amount is deducted or levied¹³ from sums staked or won¹⁴;
- 2349 (c) that any participation fee¹⁵ does not exceed such maximum as may be prescribed¹⁶;
- 2350 (d) that a game played on one set of premises¹⁷ is not linked¹⁸ with a game played on another set of premises¹⁹;
- 2351 (e) that, except in the case of a club of a kind mentioned in head (2) or head (4) above, each person who participates:

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- 277. (i) is a member of the club or institute who applied for membership, was nominated for membership or became a member, at least 48 hours before he participates; or
- 278. (ii) is a guest of a member²⁰ of the club or institute who would be entitled to participate by virtue of head (i) above²¹.

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The above exemption from the statutory provision creating the offence of unlawfully providing facilities for gambling²² does not, however, apply to high turnover bingo²³ played during a high turnover period²⁴.

- 1 le the Gambling Act 2005 s 33: see PARA 615. As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.
 - 2 le the Gambling Act 2005 s 37: see PARA 616.
 - 3 As to the meaning of 'equal chance gaming' see PARA 311 note 4.
 - 4 For these purposes, a reference to the provision of facilities by a club or institute includes a reference to any provision of facilities made (1) on behalf of or by arrangement with the club or institute; and (2) in the course of its activities: Gambling Act 2005 s 270(1). As to the meaning of 'members' club' see PARA 578.
 - 5 As to the meaning of 'commercial club' see PARA 579.
 - 6 le but for the Gambling Act 2005 s 266(1)(a): see PARA 578.
 - 7 le but for the Gambling Act 2005 s 267(1)(a): see PARA 579.
 - 8 As to the meaning of 'miners' welfare institute' see PARA 580.
 - 9 Gambling Act 2005 s 269(1).
 - 10 'Prescribed' means prescribed by regulations made by the Secretary of State: Gambling Act 2005 s 276. As to the Secretary of State see PARA 2. Regulations prescribing requirements in relation to stakes or prizes for these purposes may, in particular, make different provision for different classes of club or institute and make different provision for different classes or descriptions of game: s 270(2). As to the meaning of 'stake' see PARA 312 note 6; and as to the meaning of 'prize' see PARA 310 note 2. In the exercise of this power, the Secretary of State has made the Gambling Act 2005 (Exempt Gaming in Clubs) Regulations 2007, SI 2007/1944, which came into force on 1 September 2007: reg 1(1).
 - 11 The Gambling Act 2005 (Exempt Gaming in Clubs) Regulations 2007, SI 2007/1944, reg 2 applies to the provision of facilities for games of poker under the Gambling Act 2005 s 269 and prescribes, for the purposes of s 269(2)(a) (see the text to this note), requirements in relation to amounts that may be staked: Gambling Act 2005 (Exempt Gaming in Clubs) Regulations 2007, SI 2007/1944, reg 2(1). Subject to reg 2(3), (4), the amount that may be staked by a person on any game of poker must not exceed £10 (reg 2(2)); and subject to reg 2(4), the aggregate of the amounts that may be staked on games of poker in any one day must not exceed £250 (reg 2(3)). The aggregate of the amounts that may be staked on games of poker in any period of seven days must not exceed £1,000: reg 2(4). 'Poker' includes any version of that game, whatever name it is called (reg 1(2)); and a reference to a day is a reference to a period of 24 hours beginning at midday (reg 1(3)).
 - 12 Gambling Act 2005 s 269(2). The maximum amount or value of a prize that may be won in any game of poker is £250: Gambling Act 2005 (Exempt Gaming in Clubs) Regulations 2007, SI 2007/1944, reg 3.
 - 13 In the Gambling Act 2005 s 269(3) (see head (b) in the text) the reference to a deduction or levy in respect of gaming provided by, on behalf of or by arrangement with a club or institute is to a deduction or levy made by or on behalf of (1) the club or institute; or (2) a person providing facilities for gaming on behalf of, or by arrangement with, the club or institute: s 270(3).
 - 14 Gambling Act 2005 s 269(3).
 - 15 As to the meaning of 'participation fee' see PARA 370 note 4.
 - 16 Gambling Act 2005 s 269(4). Regulations prescribing a maximum charge for these purposes may, in particular (1) make different provision for different classes of club or institute; (2) make provision depending on whether a club or institute holds a club gaming permit; (3) make different provision for different classes or descriptions of game; (4) make different provision for different classes or descriptions of fee: s 270(4).
- Where a relevant club does not hold a club gaming permit, the maximum participation fee that a relevant club may charge a person in respect of entitlement to participate in a particular kind of game on any one day is (a) £18 in respect of bridge or whist, if the game is played on a day on which no facilities for any kinds of gaming (other than bridge or whist) are provided by the relevant club on that day; and (b) in any other circumstances; (i) subject to head (ii) below, £1; or (ii) in the case of a commercial club that holds a club machine permit, £3: Gambling Act 2005 (Exempt Gaming in Clubs) Regulations 2007, SI 2007/1944, reg 4(1), (2). Where a members' club or miners' welfare institute holds a club gaming permit, the maximum participation fee that it may charge a person in respect of entitlement to participate in a particular kind of game in any one day is (A) £20 (exclusive of value added tax) in respect of bridge or whist, if the game is played on a day on which no facilities for any kinds of gaming (other than bridge or whist) are provided by the relevant club on that day; and (B) £3 (exclusive of value added tax) for equal chance gaming in any other circumstances: reg 5. 'Relevant club' means a club or institute described in heads (1)-(5) in the text: see reg 1(2). As to the meaning of 'club gaming permit' see PARA 581; and as to the meaning of 'club machine permit' see PARA 582.

17 As to the meaning of 'premises' see PARA 311 note 5.

18 For these purposes, two games are linked if (1) the result of one game is or may be wholly or partly determined by reference to the result of the other game; or (2) the amount of winnings available in one game is or may be wholly or partly determined by reference to the amount of participation in the other game; and if a single game is played partly on one set of premises and partly on another it is to be treated as two linked games: Gambling Act 2005 s 270(5).

19 Gambling Act 2005 s 269(5).

20 For these purposes, a person is not to be treated as the guest of a member if the member extends an invitation (1) having had no previous acquaintance with the person; and (2) for the purpose only of enabling the person to take advantage of facilities for gaming provided by or for the club or institute: Gambling Act 2005 s 270(6).

21 Gambling Act 2005 s 269(6).

22 See note 1.

23 As to the meaning of 'high turnover bingo' see PARA 667.

24 See the Gambling Act 2005 s 275(1); and PARA 667.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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666. Club gaming permits and club machine permits.

The statutory provisions creating the offences of:

- 2352 (1) unlawfully providing facilities for gambling¹;
- 2353 (2) unlawfully using premises for gambling²; and
- 2354 (3) unlawfully making a gaming machine³ available for use⁴,

do not apply to the provision of facilities for gaming⁵ in accordance with a club gaming permit⁶, except that the provision creating the offence described in head (1) above is not disapplied in relation to high turnover bingo⁷ played during a high turnover period⁸.

The statutory provisions creating the offences described in heads (2) and (3) above do not apply to making a gaming machine available for use in accordance with a club machine permit⁹.

¹ See the Gambling Act 2005 s 33; see PARA 615. As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

² See the Gambling Act 2005 s 37; see PARA 616. As to the meaning of 'premises' see PARA 311 note 5.

³ As to the meaning of 'gaming machine' see PARA 547.

⁴ See the Gambling Act 2005 s 242; see PARA 638.

⁵ As to the meaning of 'gaming' see PARA 310.

⁶ See the Gambling Act 2005 s 271(1); and PARA 581. As to the meaning of 'club gaming permit' see PARA 581.

⁷ As to the meaning of 'high turnover bingo' see PARA 667.

⁸ See the Gambling Act 2005 s 275(1); and PARA 667.

⁹ See the Gambling Act 2005 s 273(1); and PARA 582. As to the meaning of 'club machine permit' see PARA 582.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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667. High turnover bingo.

Bingo¹ played in the course of the activities of a club or institute in any period of seven days is high turnover bingo if:

- 2355 (1) the aggregate of stakes² at bingo played during the period in the course of the activities of the club or institute exceeds £2,000³; or
- 2356 (2) the aggregate of prizes⁴ at bingo played during the period in the course of the activities of the club or institute exceeds £2,000⁵.

A high turnover period begins in relation to a club or institute at the end of a period of seven days during which:

- 2357 (a) the aggregate of stakes at bingo played in the course of the activities of the club or institute exceeds £2,000⁶; or
- 2358 (b) the aggregate of prizes at bingo played in the course of the activities of the club or institute exceeds £2,000⁷;

and expires at the end of the year beginning with the first day of the period of seven days which caused the high turnover period to begin⁸. A period of seven days any of which is in a high turnover period does not cause a new high turnover period to begin⁹.

Despite the statutory exemptions with regard to equal chance gaming in clubs and institutes¹⁰ and club gaming permits¹¹, high turnover bingo played during a high turnover period is not exempt from the requirement¹² for an operating licence¹³. A club or institute in relation to which a high turnover period begins must, unless the club or institute holds a bingo operating licence¹⁴, inform the Gambling Commission¹⁵ as soon as is reasonably practicable¹⁶. A club or institute commits an offence if it fails without reasonable excuse to comply with this requirement¹⁷.

1 As to the meaning of 'bingo' see PARA 349 note 8.

2 As to the meaning of 'stake' see PARA 312 note 6.

3 Gambling Act 2005 s 275(2)(a). The Secretary of State may by order vary a monetary amount specified in s 275: s 275(9). At the date at which this volume states the law, no such order had been made. As to the Secretary of State see PARA 2.

4 As to the meaning of 'prize' see PARA 310 note 2.

5 Gambling Act 2005 s 275(2)(b); and see note 3.

6 Gambling Act 2005 s 275(3)(a); and see note 3.

7 Gambling Act 2005 s 275(3)(b); and see note 3.

8 Gambling Act 2005 s 275(4).

9 Gambling Act 2005 s 275(5).

10 le the Gambling Act 2005 s 269: see PARA 665. As to the meaning of 'equal chance gaming' see PARA 311 note 4.

11 le the Gambling Act 2005 s 271: see PARA 581. As to the meaning of 'club gaming permit' see PARA 581.

12 le under the Gambling Act 2005 s 33: see PARA 615.

13 le the disapplication of the Gambling Act 2005 s 33 by s 269 or s 271 does not apply: s 275(1). As to the meaning of 'operating licence' see PARA 349 note 2.

14 As to the meaning of 'bingo operating licence' see PARA 349 at head (2).

15 As to the Gambling Commission see PARA 4.

16 Gambling Act 2005 s 275(6).

17 Gambling Act 2005 s 275(7). A club or institute guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 275(8). As to the standard scale see PARA 17 note 21. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(B) PUBS ETC

668. Exempt gaming in pubs etc.

The statutory provisions creating the offences of unlawfully providing facilities for gambling¹ and unlawfully using premises for gambling² do not apply to the provision of facilities for equal chance gaming³ which takes place on premises⁴:

- 2359 (1) in respect of which an on-premises alcohol licence⁵ has effect⁶;
- 2360 (2) which contain a bar at which alcohol⁷ is served for consumption on the premises, without a requirement that alcohol is served only with food⁸; and
- 2361 (3) at a time when alcohol may be supplied in reliance on the alcohol licence⁹;

and which satisfies the following conditions¹⁰. The conditions of gaming for these purposes are:

- 2362 (a) that the arrangements for the gaming satisfy the prescribed requirements¹¹ in relation to limiting amounts that may be staked¹², or limiting the amount or value of a prize¹³;
- 2363 (b) that no amount is deducted or levied from sums staked or won¹⁴;
- 2364 (c) that no participation fee¹⁵ is charged¹⁶;
- 2365 (d) that a game played on one set of premises is not linked¹⁷ with a game played on another set of premises¹⁸;
- 2366 (e) that children¹⁹ and young persons²⁰ are excluded from participation²¹.

Despite the above exemption, high turnover bingo²² played during a high turnover period²³ is not exempt from the requirement²⁴ for an operating licence²⁵. The holder of an on-premises alcohol licence for premises in relation to which a high turnover period begins must, unless he holds a bingo operating licence²⁶, inform the Gambling Commission²⁷ as soon as is reasonably practicable²⁸. A person commits an offence if he fails without reasonable excuse to comply with this requirement²⁹.

1 Ie the Gambling Act 2005 s 33: see PARA 615. As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

2 Ie the Gambling Act 2005 s 37: see PARA 616. As to the meaning of 'premises' see PARA 311 note 5.

3 As to the meaning of 'equal chance gaming' see PARA 311 note 4.

4 Ie premises to which the Gambling Act 2005 s 279 applies: see s 278(1); and heads (1)-(3) in the text.

5 As to the meaning of 'on-premises alcohol licence' see PARA 570 note 7.

6 See the Gambling Act 2005 s 278(1)(a).

7 As to the meaning of 'alcohol' for the purposes of the Licensing Act 2003 see PARA 30. That term is not defined in the Gambling Act 2005.

8 See the Gambling Act 2005 s 278(1)(b).

9 See the Gambling Act 2005 s 278(1)(c).

10 Gambling Act 2005 s 279(1).

11 For these purposes, 'prescribed' means prescribed by regulations made by the Secretary of State; and regulations may, in particular, make different provision for different classes or descriptions of game: Gambling Act 2005 s 280(1). As to the Secretary of State see PARA 2. In the exercise of this power the Secretary of State has made the Gambling Act 2005 (Exempt Gaming in Alcohol-Licensed Premises) Regulations 2007, SI 2007/1940, which came into force on 1 September 2007 (see reg 1); and the Gambling Act 2005 (Exempt Gaming in Alcohol-Licensed Premises) (Amendment) Regulations 2007, SI 2007/2240, which also came into force on that date.

12 Subject to the Gambling Act 2005 (Exempt Gaming in Alcohol-Licensed Premises) Regulations 2007, SI 2007/1940, reg 2(3), the amount that may be staked by a person on any game of chance, except dominoes and cribbage, must not exceed £5: reg 2(1), (2) (amended by SI 2007/2240). The aggregate of the amounts that may be staked on games of poker in any one day must not exceed £100: Gambling Act 2005 (Exempt Gaming in Alcohol-Licensed Premises) Regulations 2007, SI 2007/1940, reg 2(3) (as so amended). 'Poker' includes any version of that game, whatever name it is called (reg 1(2)); and a reference to a day is a reference to a period of 24 hours beginning at midday (reg 1(3)).

13 Gambling Act 2005 s 279(2). As to the meaning of 'prize' see PARA 310 note 2. The maximum amount or value of a prize that may be won in any game of poker is £100: Gambling Act 2005 (Exempt Gaming in Alcohol-Licensed Premises) Regulations 2007, SI 2007/1940, reg 3.

14 Gambling Act 2005 s 279(3).

15 For these purposes, a membership subscription is a participation fee: Gambling Act 2005 s 344(3). As to the meaning of 'participation fee' generally see PARA 370 note 4.

16 Gambling Act 2005 s 279(4).

17 For these purposes, two games are linked if (1) the result of one game is or may be wholly or partly determined by reference to the result of the other game; or (2) the amount or value of a prize available in one game is or may be wholly or partly determined by reference to the extent of participation in the other game; and if a single game is played partly on one set of premises and partly on another it is to be treated as two linked games: Gambling Act 2005 s 280(2).

18 Gambling Act 2005 s 279(5).

19 As to the meaning of 'child' see PARA 331 note 2.

20 As to the meaning of 'young person' see PARA 353 note 5.

21 Gambling Act 2005 s 279(6).

22 Bingo played on premises in any period of seven days is high turnover bingo if (1) the aggregate of stakes at bingo played on the premises during the period exceeds £2,000; or (2) the aggregate of prizes at bingo played on the premises during the period exceeds £2,000: Gambling Act 2005 s 281(2). The Secretary of State may by order vary a monetary amount specified s 281: s 281(9). At the date at which this volume states the law, no such order had been made. As to the meaning of 'bingo' see PARA 349 note 8.

23 A high turnover period begins in relation to premises at the end of a period of seven days during which (1) the aggregate of stakes at bingo played on the premises exceeds £2,000; or (2) the aggregate of prizes at bingo played on the premises exceeds £2,000: s 281(3); and see note 22. A high turnover period expires at the end of the year beginning with the first day of the period of seven days which caused the high turnover period to begin: s 281(4). A period of seven days any of which is in a high turnover period does not cause a new high turnover period to begin: s 281(5).

24 Ie under the Gambling Act 2005 s 33: see PARA 615. As to the meaning of 'operating licence' see PARA 349 note 2.

25 Ie the disapplication of the Gambling Act 2005 s 33 by s 279 does not apply to high turnover bingo played during a high turnover period: s 281(1).

26 As to the meaning of 'bingo operating licence' see PARA 349 at head (2).

27 As to the Gambling Commission see PARA 4.

28 Gambling Act 2005 s 281(6).

29 Gambling Act 2005 s 281(7). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 281(8). As to the standard scale see PARA 17 note 21. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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669. Automatic entitlement to make certain gaming machines available for use.

The statutory provisions creating the offences of unlawfully using premises for gambling¹ and unlawfully making a gaming machine² available for use³ do not apply to making one or two gaming machines, each of which is of Category C⁴ or Category D⁵, available for use on premises⁶:

- 2367 (1) in respect of which an on-premises alcohol licence⁷ has effect⁸;
- 2368 (2) which contain a bar at which alcohol⁹ is served for consumption on the premises, without a requirement that alcohol is served only with food¹⁰; and
- 2369 (3) at a time when alcohol may be supplied in reliance on the alcohol licence¹¹,

provided that the following conditions are satisfied¹². Those conditions are:

- 2370 (a) that the person who holds the on-premises alcohol licence sends the licensing authority¹³ written notice¹⁴ of his intention to make gaming machines available for use in reliance on the above exemption, together with the prescribed fee¹⁵;
- 2371 (b) that any relevant provision of a code of practice¹⁶ about the location and operation of a gaming machine is complied with¹⁷.

This exemption does not, however, disapply the provisions creating the offences referred to above in respect of premises at a time when gaming machines are made available for use on those premises in reliance on a club gaming permit¹⁸ or a club machine permit¹⁹.

1 Ie the Gambling Act 2005 s 37: see PARA 616. As to the meaning of 'premises' see PARA 311 note 5.

2 As to the meaning of 'gaming machine' see PARA 547.

3 Ie the Gambling Act 2005 s 242: see PARA 638.

4 As to categories of gaming machine see generally PARA 548; and as to the meaning of 'Category C gaming machine' see PARA 551.

5 As to the meaning of 'Category D gaming machine' see PARA 552.

6 Ie premises to which the Gambling Act 2005 s 282 applies: see s 278(1); and heads (1)-(3) in the text.

7 As to the meaning of 'on-premises alcohol licence' see PARA 570 note 7.

8 See the Gambling Act 2005 s 278(1)(a).

9 As to the meaning of 'alcohol' for the purposes of the Licensing Act 2003 see PARA 30. That term is not defined in the Gambling Act 2005.

10 See the Gambling Act 2005 s 278(1)(b).

11 See the Gambling Act 2005 s 278(1)(c).

12 Gambling Act 2005 s 282(1).

13 As to the meaning of 'licensing authority' for these purposes see PARA 570 note 2. As to the licensing authorities generally see PARA 3.

14 As to the method of giving notice see PARA 356 note 5.

15 Gambling Act 2005 s 282(2). For these purposes, 'prescribed' means, in the case of premises in respect of which an on-premises alcohol licence has effect, prescribed by regulations made by the Secretary of State: s 282(5)(a). As to the Secretary of State see PARA 2. The prescribed fee is £50: see the Gaming Machines in Alcohol Licensed Premises (Notification Fee) (England and Wales) Regulations 2007, SI 2007/1832, reg 3.

16 Is a code of practice under the Gambling Act 2005 s 24: see PARA 337.

17 Gambling Act 2005 s 282(3).

18 As to the meaning of 'club gaming permit' see PARA 581.

19 Gambling Act 2005 s 282(4). As to the meaning of 'club machine permit' see PARA 582.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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670. Removal of exemptions from specified premises.

A licensing authority¹ may make an order disapplying the statutory provisions relating to exempt gaming² or automatic entitlement to make certain gaming machines available for use³ to specified premises⁴. A licensing authority may make such an order only if the authority thinks that:

- 2372 (1) the application of the provision in question is not reasonably consistent with pursuit of the licensing objectives⁵;
- 2373 (2) gaming has taken place on the premises in purported reliance on that provision but in breach of a condition of that provision;
- 2374 (3) the premises are mainly used or to be used for gaming; or
- 2375 (4) an offence under the Gambling Act 2005 has been committed on the premises⁶.

Before making such an order, a licensing authority must:

- 2376 (a) give the holder of the on-premises alcohol licence⁷ ('the licensee') at least 21 days' notice⁷ of the authority's intention to consider making an order;
- 2377 (b) consider any representations made by the licensee;
- 2378 (c) hold a hearing if the licensee requests one; and
- 2379 (d) comply with any prescribed requirements⁸ for the procedure to be followed in considering whether to make an order⁹.

If a licensing authority makes such an order, the authority must as soon as is reasonably practicable give the licensee a copy of the order and written reasons for the decision to make the order¹⁰.

A licensee may appeal against the making of such an order¹¹. Such an appeal must be instituted:

- 2380 (i) in the magistrates' court for a local justice area in which the premises to which the appeal relates are wholly or partly situated;
- 2381 (ii) by notice of appeal given to the designated officer; and
- 2382 (iii) within the period of 21 days beginning with the day on which the appellant receives a copy of the order against which the appeal is brought¹².

On an appeal the magistrates' court may:

- 2383 (A) dismiss the appeal;
- 2384 (B) allow the appeal and quash the order made by the licensing authority;
- 2385 (C) make an order about costs¹³.

¹ As to the meaning of 'licensing authority' for these purposes see PARA 570 note 2. As to the licensing authorities generally see PARA 3.

- 2 le the Gambling Act 2005 s 279: see PARA 668. As to the meaning of 'gaming' see PARA 310.
- 3 le the Gambling Act 2005 s 282(1): see PARA 669. As to the meaning of 'gaming machine' see PARA 547.
- 4 Gambling Act 2005 s 284(1). As to the premises to which s 284 applies see s 278(1), cited in PARAS 570, 668-669.
- 5 As to the licensing objectives see PARA 331.
- 6 Gambling Act 2005 s 284(2).
- 7 As to the method of giving notice see PARA 356 note 5.
- 8 For these purposes, 'prescribed' means prescribed by regulations made by the Secretary of State: Gambling Act 2005 s 284(9). At the date at which this volume states the law, no such regulations had been made. As to the Secretary of State see PARA 2.
- 9 Gambling Act 2005 s 284(3).
- 10 Gambling Act 2005 s 284(4).
- 11 Gambling Act 2005 s 284(5).
- 12 Gambling Act 2005 s 284(6).
- 13 Gambling Act 2005 s 284(7).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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671. Licensed premises gaming machine permits.

A person does not commit an offence of unlawfully using premises for gambling¹ or unlawfully making a gaming machine² available for use³ if he makes a gaming machine of Category C⁴ or Category D⁵ available in accordance with a licensed premises gaming machine permit⁶. The above provision does not, however, disapply the provisions creating those offences in respect of premises⁷ at a time when gaming machines are made available for use on those premises in reliance on a club gaming permit⁸ or a club machine permit⁹.

1 Ie an offence under the Gambling Act 2005 s 37: see PARA 616. As to the meaning of 'premises' see PARA 311 note 5.

2 As to the meaning of 'gaming machine' see PARA 547.

3 Ie an offence under the Gambling Act 2005 s 242: see PARA 638.

4 As to categories of gaming machine see generally PARA 548; and as to the meaning of 'Category C gaming machine' see PARA 551.

5 As to the meaning of 'Category D gaming machine' see PARA 552.

6 See the Gambling Act 2005 s 283(1); and PARA 570. As to the meaning of 'licensed premises gaming machine permit' see PARA 570.

7 Ie premises to which the Gambling Act 2005 s 283 applies: see s 278(1), cited in PARA 570.

8 As to the meaning of 'club gaming permit' see PARA 581.

9 See the Gambling Act 2005 s 283(4); and PARA 570. As to the meaning of 'club machine permit' see PARA 582.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(vi) Exemptions and Exceptions/F. EXEMPTIONS FOR TRAVELLING FAIRS/672. Meaning of 'travelling fair'.

F. EXEMPTIONS FOR TRAVELLING FAIRS

672. Meaning of 'travelling fair'.

For the purposes of the Gambling Act 2005, 'fair' means a fair consisting wholly or principally of the provision of amusements¹. A fair held on a day in a calendar year is a 'travelling fair' if provided:

- 2386 (1) wholly or principally by persons who travel from place to place for the purpose of providing fairs; and
- 2387 (2) at a place no part of which has been used for the provision of a fair on more than 27 days in that calendar year².

1 Gambling Act 2005 ss 286(1)(a), 353(1).

2 Gambling Act 2005 ss 286(1)(b), 353(1).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(vi) Exemptions and Exceptions/F. EXEMPTIONS FOR TRAVELLING FAIRS/673. Exemptions for travelling fairs.

673. Exemptions for travelling fairs.

A person does not commit an offence of unlawfully using premises for gambling¹ or unlawfully making a gaming machine² available for use³ if:

- 2388 (1) he makes one or more Category D gaming machines⁴ available for use at a travelling fair⁵; and
- 2389 (2) facilities for gambling, whether by way of gaming machine or otherwise, amount together to no more than an ancillary amusement at the fair⁶.

A person does not commit an offence of unlawfully providing facilities for gambling⁷ or unlawfully using premises for gambling⁸ by providing facilities for equal chance prize gaming⁹ if:

- 2390 (a) the gaming satisfies the specified conditions¹⁰;
- 2391 (b) the facilities are provided at a travelling fair; and
- 2392 (c) facilities for gambling, in whatever form, amount together to no more than an ancillary amusement at the fair¹¹.

The Secretary of State¹² may, however, by order provide for the latter exemption not to have effect in relation to prize gaming of a specified description¹³.

1 Is an offence under the Gambling Act 2005 s 37: see PARA 616. As to the meaning of 'premises' see PARA 311 note 5.

2 As to the meaning of 'gaming machine' see PARA 547.

3 Is an offence under the Gambling Act 2005 s 242: see PARA 638.

4 As to categories of gaming machine see generally PARA 548; and as to the meaning of 'Category D gaming machine' see PARA 552.

5 As to the meaning of 'travelling fair' see PARA 672.

6 Gambling Act 2005 s 287.

7 Is an offence under the Gambling Act 2005 s 33: see PARA 615. As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

8 See note 1.

9 As to the meaning of 'equal chance gaming' see PARA 311 note 4; and as to the meaning of 'prize gaming' see PARA 592.

10 Is the conditions specified in the Gambling Act 2005 s 293: see PARA 592.

11 Gambling Act 2005 s 292.

12 As to the Secretary of State see PARA 2.

13 Gambling Act 2005 s 294. At the date at which this volume states the law, no such order had been made.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(vi) Exemptions and Exceptions/G. EXEMPTIONS FOR PRIZE GAMING AT GAMING AND ENTERTAINMENT CENTRES AND BINGO HALLS/674. Exemptions for gaming and entertainment centres.

G. EXEMPTIONS FOR PRIZE GAMING AT GAMING AND ENTERTAINMENT CENTRES AND BINGO HALLS

674. Exemptions for gaming and entertainment centres.

A person does not commit an offence of unlawfully providing facilities for gambling¹ or unlawfully using premises for gambling² by providing facilities for prize gaming³ if:

- 2393 (1) the gaming satisfies the specified conditions⁴; and
- 2394 (2) the facilities are provided in an adult gaming centre⁵ or a licensed family entertainment centre⁶.

Nor does a person does not commit such an offence by providing facilities for equal chance prize gaming⁷ if:

- 2395 (a) the gaming satisfies the specified conditions⁸; and
- 2396 (b) the facilities are provided on premises in respect of which a family entertainment centre gaming machine permit⁹ has effect¹⁰.

The Secretary of State¹¹ may by order provide for the above exemptions not to have effect in relation to prize gaming of a specified description¹².

1 Ie an offence under the Gambling Act 2005 s 33: see PARA 615. As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

2 Ie an offence under the Gambling Act 2005 s 37: see PARA 616. As to the meaning of 'premises' see PARA 311 note 5.

3 As to the meaning of 'prize gaming' see PARA 592.

4 Ie the conditions specified in the Gambling Act 2005 s 293: see PARA 592.

5 As to the meaning of 'adult gaming centre' see PARA 349 note 14.

6 Gambling Act 2005 s 290(1). As to the meaning of 'licensed family entertainment centre' see PARA 363 note 3.

7 As to the meaning of 'equal chance gaming' see PARA 311 note 4.

8 See note 4.

9 As to the meaning of 'family entertainment centre gaming machine permit' see PARA 562.

10 Gambling Act 2005 s 290(2).

11 As to the Secretary of State see PARA 2.

12 Gambling Act 2005 s 294. At the date at which this volume states the law, no such order had been made.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(vi) Exemptions and Exceptions/G. EXEMPTIONS FOR PRIZE GAMING AT GAMING AND ENTERTAINMENT CENTRES AND BINGO HALLS/675. Exemptions for bingo halls.

675. Exemptions for bingo halls.

A person does not commit an offence of unlawfully providing facilities for gambling¹ or unlawfully using premises for gambling² by providing facilities for prize gaming³ in premises in respect of which a bingo premises licence⁴ has effect⁵. This exemption may not be disapplied or modified:

- 2397 (1) by way of a condition attached to an operating licence⁶ as an individual condition imposed by the Gambling Commission⁷; or
- 2398 (2) by way of a condition attached⁸ to a premises licence⁹.

A condition may, however, be attached to an operating licence as a general condition imposed by the Commission or by the Secretary of State¹⁰ so as:

- 2399 (a) to prevent facilities for a specified description of game from being provided in reliance on the above exemption; or
- 2400 (b) to provide for that exemption to apply, whether generally or only in connection with a specified description of game, subject to specified conditions or only in specified circumstances¹¹;

and a condition attached as a general condition imposed by the Secretary of State¹² by virtue of heads (a) and (b) above may, in particular, relate to a matter specified in heads (i) to (v) below¹³:

- 2401 (i) limiting amounts that may be staked¹⁴;
- 2402 (ii) limiting the amount that may be charged by way of participation fee¹⁵;
- 2403 (iii) limiting the amount or value of a prize or class of prize¹⁶;
- 2404 (iv) requiring that at least a specified proportion of stakes¹⁷ be paid out by way of prizes¹⁸;
- 2405 (v) imposing requirements that are specific to games of bingo¹⁹ played on more than one set of premises, whether facilities for the game are provided in accordance with one bingo operating licence or more than one²⁰.

1 Ie an offence under the Gambling Act 2005 s 33: see PARA 615. As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

2 Ie an offence under the Gambling Act 2005 s 37: see PARA 616. As to the meaning of 'premises' see PARA 311 note 5.

3 As to the meaning of 'prize gaming' see PARA 592.

4 As to the meaning of 'bingo premises licence' see PARA 460 at head (2).

5 Gambling Act 2005 s 291(1).

6 As to the meaning of 'operating licence' see PARA 349 note 2.

- 7 le attached under the Gambling Act 2005 s 77: see PARA 357. As to the Gambling Commission see PARA 4.
- 8 le under the Gambling Act 2005 s 167, s 168 or s 169: see PARAS 484-486.
- 9 Gambling Act 2005 s 291(4). As to the meaning of 'premises licence' see PARA 460 note 1.
- 10 le under the Gambling Act 2005 s 75 (see PARA 357) or s 78 (see PARA 358). As to the Secretary of State see PARA 2.
- 11 Gambling Act 2005 s 291(3).
- 12 le under the Gambling Act 2005 s 78: see PARA 358.
- 13 le a matter listed in the Gambling Act 2005 s 91(1): see s 291(4).
- 14 See the Gambling Act 2005 s 91(1)(a).
- 15 See the Gambling Act 2005 s 91(1)(b). As to the meaning of 'participation fee' see PARA 370 note 4.
For the prescribed limits see the Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, reg 3(3)-(5); and PARA 358 at head (2)(a)-(c).
- 16 See the Gambling Act 2005 s 91(1)(c). For the prescribed limits see the Gambling Act 2005 (Operating Licence Conditions) Regulations 2007, SI 2007/2257, reg 3(6)-(9); and PARA 358 at head (2)(d)-(e).
- 17 As to the meaning of 'stake' see PARA 312 note 6.
- 18 See the Gambling Act 2005 s 91(1)(d).
- 19 As to the meaning of 'bingo' see PARA 349 note 8.
- 20 See the Gambling Act 2005 s 91(1)(e).

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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676. Prize gaming permits.

A person does not commit an offence of unlawfully providing facilities for gambling¹ or unlawfully using premises for gambling² by providing facilities for prize gaming³ if the gaming satisfies the specified conditions⁴ and the facilities are provided in accordance with a prize gaming permit⁵.

1 Is an offence under the Gambling Act 2005 s 33: see PARA 615. As to the meaning of 'providing facilities' for gambling see PARA 309; and as to the meaning of 'gambling' see PARA 308.

2 Is an offence under the Gambling Act 2005 s 37: see PARA 616. As to the meaning of 'premises' see PARA 311 note 5.

3 As to the meaning of 'prize gaming' see PARA 592.

4 Are the conditions specified in the Gambling Act 2005 s 293: see PARA 592.

5 See the Gambling Act 2005 s 289(1); and PARA 592.

As to the meaning of 'prize gaming permit' see PARA 592.

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(vii) Offences with regard to Advertising of Gambling

677. Meaning of 'advertising'.

For the purposes of the Gambling Act 2005, a person advertises gambling¹ if:

- 2406 (1) he does anything to encourage one or more persons to take advantage, whether directly or through an agent, of facilities for gambling²;
 - 2407 (2) with a view to increasing the use of facilities for gambling, he brings them or information about them to the attention of one or more persons³; or
 - 2408 (3) he participates in or facilitates an activity knowing or believing that it is designed to:
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- 279. (a) encourage one or more persons to take advantage, whether directly or through an agent, of facilities for gambling; or
 - 280. (b) increase the use of facilities for gambling by bringing them or information about them to the attention of one or more persons⁴.
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1 As to the meaning of 'gambling' see PARA 308.

2 Gambling Act 2005 ss 327(1)(a), 353(2)(b).

3 Gambling Act 2005 ss 327(1)(b), 353(2)(b). For the purposes of s 327(1), a person is to be treated as bringing facilities for gambling to the attention of one or more persons with a view to increasing the use of the facilities if (1) he enters into arrangements (whether by way of sponsorship, brand-sharing or otherwise) under which a name is displayed in connection with an event or product; and (2) either (a) the provision of facilities for gambling is the sole or main activity undertaken under that name; or (b) the manner or context in which the name is displayed is designed to draw attention to the fact that facilities for gambling are provided under that name: s 327(2). As to the meaning of 'providing facilities' for gambling see PARA 309.

4 Gambling Act 2005 ss 327(1)(c), 353(2)(b); and see note 3.

The Advertising Standards Authority has introduced new provisions in its codes of practice for non-broadcast and broadcast advertisements to coincide with the coming into force of the provisions of the Gambling Act 2005 concerned with advertising (ie Pt 16 (ss 327-333)) on 1 September 2007. For details of the codes, and recent adjudications by the Authority relating to the advertising of gambling, see the Authority's website, accessible at the date at which this volume states the law at www.asa.org.uk. The Authority is a non-statutory independent body set up and funded by the advertising industry; its adjudications have no legal force but advertisers who persistently flout its codes may be referred to the Office of Communications ('OFCOM') or to the Office of Fair Trading.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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678. Advertising unlawful gambling.

A person commits an offence if he advertises¹ unlawful gambling². For these purposes, advertised gambling is unlawful if:

- 2409 (1) in order for the gambling to take place as advertised without the commission of an offence under the Gambling Act 2005 it would or might be necessary to rely on a licence, notice, permit or registration under that Act or an exception to an offence under that Act; and
- 2410 (2) at the time of advertising, arrangements for a licence, notice, permit or registration, sufficient to prevent the commission of an offence under that Act if the gambling takes place as advertised, have not been completed and the arrangements for the gambling as advertised are not such as to ensure that an exception to the offence will apply³.

The offence described above does not, however, apply to anything done by way of promoting a lottery⁴. Furthermore, a person does not commit such an offence by reason only of delivering, transmitting or broadcasting a communication or making data available if:

- 2411 (a) he acts in the course of a business of delivering, transmitting or broadcasting communications, in whatever form or by whatever means, or making data available; and
- 2412 (b) the nature of the business is such that persons undertaking it have no control over the nature or content of the communications or data⁵.

It is a defence for a person charged with such an offence by reference to action of one of the following kinds⁶, namely:

- 2413 (i) doing anything to encourage one or more persons to take advantage, whether directly or through an agent, of facilities for gambling⁷; or
- 2414 (ii) with a view to increasing the use of facilities for gambling, bringing them or information about them to the attention of one or more persons⁸,

to show that he reasonably believed that the advertised gambling was lawful⁹.

Where a person acts in the following way¹⁰, namely by participating in or facilitating an activity knowing or believing that it is designed to:

- 2415 (A) encourage one or more persons to take advantage, whether directly or through an agent, of facilities for gambling; or
- 2416 (B) increase the use of facilities for gambling by bringing them or information about them to the attention of one or more persons¹¹,

he commits the offence under the above provisions only if he knows or should know that the advertised gambling is unlawful¹².

1 As to the meaning of 'advertises' see PARA 677. The prohibition in the Gambling Act 2005 s 330(1) (see the text and note 2) applies to anything in the way of advertising which is done (1) wholly or partly in Great Britain; and (2) otherwise than by way of remote communication (s 332(2)); and for these purposes the following are immaterial, namely the nature of gambling to which advertising relates (whether remote or non-remote) and the location of the gambling to which advertising relates (s 332(4)). As to the meaning of 'Great Britain' see PARA 16 note 8; and as to the meanings of 'remote communication' and 'gambling' see PARA 308.

That prohibition applies to advertising by way of remote communication only (a) if the advertising satisfies the test in s 333(4); (b) the advertising satisfies the additional test in s 334(5) or (6), if relevant; and (c) the gambling to which the advertising relates satisfies the test in s 333(9): s 333(2). The test referred to in head (a) above is that the advertising involves (i) providing information, by whatever means (and whether or not using remote communication), intended to come to the attention of one or more persons in Great Britain; (ii) sending a communication intended to come to the attention of one or more persons in Great Britain; (iii) making data available with a view to its being accessed by one or more persons in Great Britain; or (iv) making data available in circumstances such that it is likely to be accessed by one or more persons in Great Britain: s 334(4).

In the case of a broadcast by television, the additional test is that the broadcaster is either under the jurisdiction of the United Kingdom for the purposes of EEC Council Directive 89/552 (OJ L298, 17.10.89, p 23) on the coordination of provisions concerning television broadcasting, or is not under the jurisdiction of an EEA state for the purposes of that Directive: Gambling Act 2005 s 334(5). In the case of the dissemination of information by way of an information society service within the meaning of European Parliament and EC Council Directive 2000/31 (OJ L178, 17.7.2000, p 1) on electronic commerce, the additional test is that the service provider (A) is established in the United Kingdom for the purposes of that Directive; (B) is established in a non-EEA state for the purposes of that Directive; or (C) has been notified that the conditions for derogation specified in art 3(4) are satisfied in relation to the application to the service provider of regulations under the Gambling Act 2005 s 328 (see PARA 680) and of s 330: s 334(6). The reference to notification in s 334(6)(c) (see head (c) above) is a reference to written notice which has been given by the Gambling Commission, has neither expired nor been withdrawn, and states whether the Commission's opinion as to satisfaction of the conditions for derogation relates either (aa) to the conditions specified in European Parliament and EC Council Directive 2000/31 (OJ L178, 17.7.2000, p 1) art 3(4)(a) and (b); or (bb) by virtue of art 3(5), only to the conditions specified in art 3(4) (a): Gambling Act 2005 s 334(7). In a case to which s 334(7)(c)(ii) applies (see head (bb) above), the Commission must perform the duties of notification imposed on the United Kingdom by European Parliament and EC Council Directive 2000/31 (OJ L178, 17.7.2000, p 1) art 3(5): Gambling Act 2005 s 334(8). As to the Gambling Commission see PARA 4; as to the meaning of 'United Kingdom' see PARA 16 note 8; and as to the meaning of 'EEA state' see PARA 679 note 4.

The test referred to in head (c) above is, in the case of non-remote gambling, that it is to take place in Great Britain, or in the case of remote gambling, that at least one piece of remote gambling equipment to be used in providing facilities for the gambling is or will be situated in Great Britain: s 334(9). As to the meaning of 'remote gambling equipment' see PARA 615 note 10.

2 Gambling Act 2005 s 330(1). Where a person commits such an offence by causing an advertisement to be displayed or made accessible, he is to be treated as committing the offence on each day during any part of which the advertisement is displayed or made accessible: s 330(8). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or a fine not exceeding level 5 on the standard scale, or to both: s 330(7). As to the standard scale see PARA 17 note 21. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

3 Gambling Act 2005 s 330(2).

4 Gambling Act 2005 s 330(3). As to the meaning of 'lottery' see PARA 317; and as to the meaning of 'promoting a lottery' see PARA 349 note 20.

5 Gambling Act 2005 s 330(6).

6 The action of a kind described in the Gambling Act 2005 s 327(1)(a) or (b): see PARA 677 at heads (1)-(2).

7 See the Gambling Act 2005 s 327(1)(a).

8 See the Gambling Act 2005 s 327(1)(b).

9 Gambling Act 2005 s 330(4).

10 The in a way described in the Gambling Act 2005 s 327(1)(c): see PARA 677 at head (3).

11 See the Gambling Act 2005 s 327(1)(c).

12 Gambling Act 2005 s 330(5).

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560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

678 Advertising unlawful gambling

NOTE 1--See further Coroners and Justice Act 2009 s 143 (implementation of E-Commerce and Services directives: penalties).

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679. Advertising foreign gambling.

A person commits an offence if he advertises¹ foreign gambling² other than a lottery³. For these purposes, 'foreign gambling' means:

- 2417 (1) non-remote gambling which is to take place in a non-EEA state⁴; and
- 2418 (2) remote gambling⁵ none of the arrangements for which are subject to the law about gambling of an EEA state, whether by being regulated, exempted, prohibited or otherwise⁶;

and heads (1) and (2) above apply to Gibraltar as they apply to EEA states⁷.

The Secretary of State⁸ may by regulations provide that a specified country or place is to be treated for the purposes of heads (1) and (2) above as if it were an EEA state⁹. The Island of Alderney and Tasmania have been specified as such places, but only in so far as heads (1) and (2) above apply to remote gambling¹⁰; and the Isle of Man has been specified as such a place, but only so far as heads (1) and (2) above apply to remote gambling, and to non-remote gambling which takes place in a casino¹¹.

1 As to the meaning of 'advertises' see PARA 677. The prohibition in the Gambling Act 2005 s 331(1) (see the text and notes 2-3) applies to anything in the way of advertising which is done (1) wholly or partly in the United Kingdom; and (2) otherwise than by way of remote communication (s 332(3)); and for these purposes the following are immaterial, namely the nature of gambling to which advertising relates (whether remote or non-remote) and the location of the gambling to which advertising relates (s 332(4)). As to the meaning of 'United Kingdom' see PARA 16 note 8; and as to the meanings of 'remote communication' and 'gambling' see PARA 308.

That prohibition applies to advertising by way of remote communication only if the advertising satisfies the test in s 333(4) (see PARA 678 note 1); for which purpose a reference to Great Britain is to be taken as a reference to the United Kingdom: s 333(3).

2 As to the meaning of 'gambling' see PARA 308.

3 Gambling Act 2005 s 331(1). As to the meaning of 'lottery' see PARA 317. A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or a fine not exceeding level 5 on the standard scale, or to both: s 331(5). As to the standard scale see PARA 17 note 21. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

4 'EEA state' means a state which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as it has effect from time to time): Gambling Act 2005 s 353(1).

5 As to the meaning of 'remote gambling' see PARA 308.

6 Gambling Act 2005 s 331(2).

7 Gambling Act 2005 s 331(3).

8 As to the Secretary of State see PARA 2.

9 Gambling Act 2005 s 331(4). In the exercise of this power the Secretary of State has made (1) the Gambling Act 2005 (Advertising of Foreign Gambling) Regulations 2007, SI 2007/2329, which came into force on 1 September 2007 (reg 1(1)); and (2) the Gambling Act 2005 (Advertising of Foreign Gambling) (Amendment) Regulations 2008, SI 2008/19, which came into force on 31 January 2008 (reg 1(1)).

10 See the Gambling Act 2005 (Advertising of Foreign Gambling) Regulations 2007, SI 2007/2329, reg 2(1), (2) (substituted by SI 2008/19).

11 See the Gambling Act 2005 (Advertising of Foreign Gambling) Regulations 2007, SI 2007/2329, reg 3(1), (2). As to the meaning of 'casino' see PARA 311.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

679 Advertising foreign gambling

TEXT AND NOTE 10--Antigua and Barbuda also specified in so far as heads (1) and (2) apply to remote gambling: SI 2007/2329 reg 2(1), (2) (substituted by SI 2008/2829).

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(vii) Offences with regard to Advertising of Gambling/680. Contravening a requirement of regulations controlling the advertising of gambling.

680. Contravening a requirement of regulations controlling the advertising of gambling.

The Secretary of State¹ may make regulations² controlling the advertising³ of gambling⁴. The regulations may, in particular, make provision about the form of advertisements⁵, the content of advertisements⁶, timing⁷ and location⁸. In making such regulations the Secretary of State must, in particular, have regard to the need to protect children⁹ and other vulnerable persons from being harmed or exploited by gambling¹⁰. Regulations under these provisions may, in particular, make provision generally¹¹ or by reference to:

- 2419 (1) specified classes of gambling¹²;
- 2420 (2) specified classes of advertisement¹³; or
- 2421 (3) activity undertaken in or in connection with specified places¹⁴.

A person commits an offence if he contravenes a requirement of such regulations¹⁵. The regulations may provide defences¹⁶.

1 As to the Secretary of State see PARA 2.

2 Regulations under the Gambling Act 2005 s 328 (see the text and notes 3-16) may not make provision about advertising by way of television or radio services to which the Communications Act 2003 s 319 (see **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 289) applies: Gambling Act 2005 s 329(1). The Office of Communications must under the Communications Act 2003 s 319 set, review and revise standards in respect of advertisements for gambling: Gambling Act 2005 s 329(2). In complying with s 329(2) the Office of Communications must consult the Gambling Commission, and must ensure that the standards reflect the provisions of regulations under s 328: s 329(3). As to the Office of Communications see **TELECOMMUNICATIONS** vol 97 (2010) PARA 2 et seq; and as to the Gambling Commission see PARA 4.

Nor may regulations under s 328 make provision about advertising by way of a service which is provided by the British Broadcasting Corporation, and which would be licensable under the Broadcasting Act 1990 Pt I (ss 3-71) (see **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 328 et seq) or Pt III (ss 85-126) (see **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 447 et seq) or under the Broadcasting Act 1996 Pt I (ss 1-39) (see **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 412 et seq) or Pt II (ss 40-72) (see **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 475 et seq) were it provided by a person subject to licensing under that Part: Gambling Act 2005 s 329(4).

3 As to the meaning of 'advertising' see PARA 677. Regulations under the Gambling Act 2005 s 328 are to apply to anything in the way of advertising which is done (1) wholly or partly in Great Britain; and (2) otherwise than by way of remote communication: s 332(1). As to the meaning of 'Great Britain' see PARA 16 note 8; and as to the meaning of 'remote communication' see PARA 308.

Such regulations are to have effect in relation to advertising by way of remote communication only if (1) the advertising satisfies the test in s 333(4) (see PARA 678 note 1); (2) the advertising satisfies the additional test in s 333(5) or (6), if relevant (see PARA 678 note 1); and (3) the gambling to which the advertising relates satisfies the test in s 333(9) (see PARA 678 note 1): s 333(1). As to the meaning of 'gambling' see PARA 308.

4 Gambling Act 2005 s 328(1); and see notes 2-3. At the date at which this volume states the law, no such regulations had been made.

5 Gambling Act 2005 s 328(2)(a).

6 Gambling Act 2005 s 328(2)(b). Regulations by virtue of s 328(2)(b) may, in particular, require specified words to be included in advertisements: s 328(3).

7 Gambling Act 2005 s 328(2)(c).

8 Gambling Act 2005 s 328(2)(d).

9 As to the meaning of 'child' see PARA 331 note 2.

10 Gambling Act 2005 s 328(4).

11 Gambling Act 2005 s 328(9).

12 Gambling Act 2005 s 328(9)(a).

13 Gambling Act 2005 s 328(9)(b).

14 Gambling Act 2005 s 328(9)(c).

15 Gambling Act 2005 s 328(5). Where a person commits an offence under s 328 by causing an advertisement to be displayed or made accessible, he is to be treated as committing the offence on each day during any part of which the advertisement is displayed or made accessible: s 328(8). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or a fine not exceeding level 5 on the standard scale, or to both: s 328(7). As to the standard scale see PARA 17 note 21. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684.

16 Gambling Act 2005 s 328(6). The defences so provided may be similar to those provided by s 330 (see PARA 678) or otherwise: s 328(6).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(viii) Obstruction of Inspector/681. Obstruction of a person exercising a power of inspection.

(viii) Obstruction of Inspector

681. Obstruction of a person exercising a power of inspection.

A person commits an offence if without reasonable excuse he obstructs, or fails to co-operate with, a constable¹, enforcement officer² or authorised person³ who is exercising or seeking to exercise a power under or by virtue of Part 15⁴ of the Gambling Act 2005⁵.

1 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

2 As to the meaning of 'enforcement officer' see PARAS 342 note 7, 600.

3 As to the meaning of 'authorised person' see PARA 601.

4 I.e. the Gambling Act 2005 Pt 15 (ss 303-326): see PARA 600 et seq.

5 Gambling Act 2005 s 326(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 326(2). As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684. A licensing authority may institute criminal proceedings in respect of such an offence: see s 346(1)(k); and PARA 345. As to the licensing authorities see PARA 3.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(ix) Procedural Provisions and Miscellaneous Offences

682. Offences committed by bodies corporate.

Where an offence under the Gambling Act 2005 is committed by a body of persons corporate or unincorporate, other than a partnership, and it is proved that the offence was committed either with the consent or connivance of an officer of the body¹, or as a result of the negligence of an officer of the body, the officer, as well as the body, is guilty of the offence².

Where an offence under the Gambling Act 2005 is committed by a partnership, other than a limited partnership, each partner is guilty of the offence³; and where an offence under that Act is committed by a limited partnership, and it is proved that the offence was committed either with the consent or connivance of a partner, or as a result of the negligence of a partner, the partner, as well as the body, is guilty of the offence⁴.

In relation to the prosecution of a body of persons unincorporate for an offence under the Gambling Act 2005, the body is to be treated for all procedural purposes as if it were a body corporate⁵.

The Secretary of State⁶ may by regulations make provision for the modification of a provision of the above provisions in their application to a body of persons formed under, or in so far as the body is recognised by, law having effect outside the United Kingdom⁷.

1 For these purposes, a reference to an officer of a body includes a reference to (1) a director, manager or secretary; (2) a person purporting to act as a director, manager or secretary; and (3) if the affairs of the body are arranged by its members, a member: Gambling Act 2005 s 341(3). As to the meaning of 'director' see PARA 360 note 8.

2 Gambling Act 2005 s 341(1), (2).

3 Gambling Act 2005 s 341(4).

4 See the Gambling Act 2005 s 341(5), applying s 341(1), (2) with the modification that a reference to an officer of the body is replaced by a reference to a partner.

5 Gambling Act 2005 s 341(6).

6 As to the Secretary of State see PARA 2.

7 Gambling Act 2005 s 341(7). At the date at which this volume states the law, no such regulations had been made.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(ix) Procedural Provisions and Miscellaneous Offences/683. Time limit for prosecutions.

683. Time limit for prosecutions.

A magistrates' court may try an information for an offence under the Gambling Act 2005 provided that the information was laid within the period of 12 months beginning with the date, or last date, on which the offence is alleged to have been committed¹.

¹ Gambling Act 2005 s 347(1). The Magistrates' Courts Act 1980 s 127(1) (information to be laid within six months of offence: see **MAGISTRATES** vol 29(2) (Reissue) PARA 589) does not apply to an offence under the Gambling Act 2005: s 347(2).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(ix) Procedural Provisions and Miscellaneous Offences/684. Forfeiture orders.

684. Forfeiture orders.

A court by or before which a person is convicted of an offence under the Gambling Act 2005 may make an order for the forfeiture of an article that appears to the court to relate to the offence¹. A forfeiture order:

2422 (1) may include such provision about the treatment of the article forfeited as the court thinks appropriate; and

2423 (2) subject to any provision made under head (1) above, is to be treated as requiring any person in possession of the article to surrender it to a constable² as soon as is reasonably practicable³.

Where a court proposes to make a forfeiture order in respect of an article, and a person notifies the court that he has an interest in the article, the court may not make the order without first giving the person an opportunity to make representations⁴. The court which made a forfeiture order may order that the forfeited article be given up to a person who claims to have an interest in it⁵.

A person commits an offence if he fails to comply with a forfeiture order, or to co-operate with a step taken for the purpose of giving effect to a forfeiture order⁶.

1 Gambling Act 2005 s 345(1).

2 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

3 Gambling Act 2005 s 345(2).

4 Gambling Act 2005 s 345(3).

5 Gambling Act 2005 s 345(4).

6 Gambling Act 2005 s 345(5). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or a fine not exceeding level 5 on the standard scale, or to both: s 345(6). As to the standard scale see PARA 17 note 21. As to time limits for prosecutions see PARA 683; and as to offences by bodies corporate see PARA 682.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/4. GAMBLING; IN GENERAL/(11) OFFENCES/(ix) Procedural Provisions and Miscellaneous Offences/685. Miscellaneous offences.

685. Miscellaneous offences.

Offences under the Gambling Act 2005 which are not discussed in the preceding paragraphs of this section of the title¹ are discussed in the contexts in which they arise².

¹ ie offences which are not discussed in PARA 615 et seq.

² See eg the Gambling Act 2005 s 185(2) (availability of premises licence); and PARA 517; Sch 10 para 20 (availability of family entertainment centre gaming machine permit); and PARA 566. As to time limits for prosecutions see PARA 683; as to offences by bodies corporate see PARA 682; and as to forfeiture orders see PARA 684. As to prosecutions by licensing authorities see PARA 345; and as to the licensing authorities see PARA 3.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/5. THE NATIONAL LOTTERY/(1) INTRODUCTION/686. Outline of the legislation.

5. THE NATIONAL LOTTERY

(1) INTRODUCTION

686. Outline of the legislation.

The National Lottery etc Act 1993 constituted the machinery necessary to set up and administer a National Lottery to be run for the benefit of, among other good causes, charity and charitability¹. That Act created an office the holder of which was to be appointed by the Secretary of State² and known as the Director General of the National Lottery³, who had the power to grant a single licence to a body corporate to run the National Lottery⁴. The National Lottery Distribution Fund was established for apportionment, after the deduction of certain expenses, of the proceeds of the National Lottery among a variety of specified distributing bodies for expenditure on good causes⁵. The National Lottery Act 1998 replaced, with effect from 1 April 1999⁶, the office of Director General of the National Lottery with the National Lottery Commission⁷, and constituted the New Opportunities Fund which might make grants or enter into arrangements which were designed to give effect to initiatives concerned or connected with health, education or the environment⁸. The National Lottery Act 1998 also altered the apportionment of money in, and the allocation for expenditure held by, the National Lottery Distribution Fund⁹, made new provision with regard to the distributing bodies¹⁰ and established the National Endowment for Science, Technology and the Arts ('NESTA')¹¹ which might be given an initial endowment, and may receive increases in its endowment, from National Lottery proceeds¹².

The National Lottery (Funding of Endowments) Act 2003 provided that expenditure on good causes might include expenditure on endowments for such purposes¹³.

Part 3 of the Horserace Betting and Olympic Lottery Act 2004 enables Olympic Lottery games to be established as part of the National Lottery in anticipation of London hosting the 2012 Olympic and Paralympic Games¹⁴.

Finally, the National Lottery Act 2006 again altered the apportionment of money in the National Lottery Distribution Fund¹⁵ and made other minor changes. More significantly, it provided for the abolition of the National Lottery Charities Board, the Millennium Commission, and the New Opportunities Fund¹⁶ and for the establishment in their place of the Big Lottery Fund¹⁷. It also makes prospective changes to the licensing system which had not been brought into force at the date at which this volume states the law¹⁸.

1 The National Lottery was based on *A National Lottery Raising Money for Good Causes* (Cm 1861) (1992) (white paper).

2 As to the Secretary of State see PARA 2.

3 See the National Lottery etc Act 1993 s 3 (repealed).

4 See the National Lottery etc Act 1993 s 5 (as originally enacted).

5 See the National Lottery etc Act 1993 ss 21(2), 22, 24, 31; and PARAS 713-714, 721.

6 See the National Lottery Act 1998 (Commencement) Order 1999, SI 1999/650, art 2.

- 7 As to the National Lottery Commission see PARA 7.
- 8 See the National Lottery etc Act 1993 ss 43A-43D, Sch 6A (all repealed).
- 9 As to the National Lottery Distribution Fund see PARA 713.
- 10 See eg the National Lottery Act 1998 ss 11-13; and PARAS 723-725.
- 11 As to NESTA see PARA 739 et seq.
- 12 See PARA 739.
- 13 See in particular the National Lottery (Funding of Endowments) Act 2003 s 1 which makes amendments to the National Lottery Act 1993 ss 22, 25, 25B, 44; and PARAS 713, 722-723.
- 14 See the Horserace Betting and Olympic Lottery Act 2004 Pt 3 (ss 21-37, Sch 5); and PARAS 697-698, 717 et seq, 735 et seq.
- 15 See PARA 713.
- 16 See the National Lottery Act 2006 ss 16, 17; and the National Lottery Distributors Dissolution Order 2006, SI 2006/2915. The National Lotteries Charities Board was established under the National Lottery etc Act 1993 s 37 (repealed) to distribute funds allocated for charitable expenditure; and the Millennium Commission was established under s 40 (repealed) and made grants under s 41 (repealed) to fund or assist in the funding of such projects as it considered appropriate to mark the year 2000 and the beginning of the third millennium.
- 17 As to the Big Lottery Fund see PARA 729 et seq.
- 18 See PARAS 694-696.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/5. THE NATIONAL LOTTERY/(2) AUTHORISATION AND REGULATIONS OF THE NATIONAL LOTTERY/(i) Meaning of 'the National Lottery'/687. The National Lottery.

(2) AUTHORISATION AND REGULATIONS OF THE NATIONAL LOTTERY

(i) Meaning of 'the National Lottery'

687. The National Lottery.

At the date at which this volume states the law, the following provisions have effect. 'The National Lottery' means all the lotteries¹ that form part of the National Lottery, taken as a whole². A lottery forms part of the National Lottery if the following conditions are satisfied³. The lottery must be promoted⁴ or proposed to be promoted by the person licensed to run the National Lottery⁵, or in pursuance of an agreement that has been made between that person and the lottery's promoter or proposed promoter⁶. The promotion of the lottery must be authorised by a licence that has been granted⁷ to its promoter or proposed promoter⁸.

The Secretary of State⁹ may, however, by order provide for Schedule 1 to the National Lottery Act 2006, which amends the licensing structure of the National Lottery, to have effect¹⁰. Before making such an order the Secretary of State must consult the National Lottery Commission¹¹. As from the date when such an order comes into force, a lottery will form part of the National Lottery if it is promoted in accordance with a licence¹² granted by the Commission¹³.

Subject to certain exceptions¹⁴, participating in a lottery¹⁵ which forms part of the National Lottery is not gambling¹⁶ for the purposes of the Gambling Act 2005¹⁷. Nor do the particular provisions of that Act with regard to lotteries¹⁸ apply to the National Lottery¹⁹. It is, however, an offence under the Gambling Act 2005 to cheat in connection with such a lottery²⁰.

A contract which relates to the National Lottery may be enforced notwithstanding that it relates to gambling²¹.

1 In the National Lottery etc Act 1993 Pt 1 (ss 1-20) (see PARAS 7, 688 et seq), 'lottery' has the same meaning as in the Gambling Act 2005 (see PARA 317): National Lottery etc Act 1993 s 20 (definition added by the Gambling Act 2005 Sch 3 para 3).

2 National Lottery etc Act 1993 s 1(1) (as originally enacted). As to the prospective substitution of s 1 see the text and notes 12-13. Any reference to a lottery forming part of the National Lottery is to be read in accordance with s 1: s 20. The National Lottery etc Act 1993 extends to Northern Ireland (except so far as it amends enactments that do not extend there): s 63(1).

3 National Lottery etc Act 1993 s 1(2) (as originally enacted); and see note 2.

4 'Promote' includes conduct, and 'promotion' is to be read accordingly: National Lottery etc Act 1993 s 20.

5 Ie under the National Lottery etc Act 1993 s 5 (as originally enacted): see PARA 691.

6 National Lottery etc Act 1993 s 1(3) (as originally enacted; amended by the National Lottery Act 2006 s 3(a)); and see note 2.

7 Ie under the National Lottery etc Act 1993 s 6 (as originally enacted): see PARA 692.

8 National Lottery etc Act 1993 s 1(4) (as originally enacted); and see note 2.

9 As to the Secretary of State see PARA 2.

- 10 National Lottery Act 2006 s 6(1). Such an order: (1) may make transitional or incidental provision; (2) may bring all or part of Sch 1 into force; (3) may make different provision for different purposes; (4) must be made by statutory instrument; and (5) is to be subject to annulment in pursuance of a resolution of either House of Parliament: s 6(3). At the date at which this volume states the law, no such order had been made.
- 11 National Lottery Act 2006 s 6(2). As to the National Lottery Commission see PARA 7.
- 12 Is a licence under the National Lottery etc Act 1993 s 5 (as prospectively substituted): see PARA 694.
- 13 See the National Lottery etc Act 1993 s 1(1) (as prospectively substituted by the National Lottery Act 2006 Sch 1 para 2, as from a day to be appointed under s 6; at the date at which this volume states the law, no such day had been appointed and that substitution was not in force). A reference to the National Lottery is to be a reference to the lotteries forming part of the National Lottery in accordance with the National Lottery etc Act 1993 s 1(1) (as so substituted): s 1(2) (as so substituted).
- 14 For the exceptions see the Gambling Act 2005 s 15(2); and the text and notes 20-21; s 15(3); and PARA 310; s 15(4)(a), (b); and PARAS 312, 313.
- 15 As to the meaning of 'participating in a lottery' see PARA 308 note 4.
- 16 As to the meaning of 'gambling' see PARA 308.
- 17 Gambling Act 2005 s 15(1).
- 18 Is the Gambling Act 2005 ss 252-263: see PARAS 377, 378 note 8, 484 note 9, 643 et seq.
- 19 Gambling Act 2005 s 264.
- 20 See the Gambling Act 2005 42, applied for these purposes by s 15(2)(a); and PARA 618.
- 21 See the Gambling Act 2005 s 335, applied for these purposes by s 15(2)(b); and PARA 327.

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/5. THE NATIONAL LOTTERY/(2) AUTHORISATION AND REGULATIONS OF THE NATIONAL LOTTERY/(ii) General Functions and Duties of the Secretary of State and the National Lottery Commission/688. Overriding duties of the Secretary of State and the National Lottery Commission.

(ii) General Functions and Duties of the Secretary of State and the National Lottery Commission

688. Overriding duties of the Secretary of State and the National Lottery Commission.

The Secretary of State¹ and, subject to any directions it may be given by the Secretary of State², the National Lottery Commission ('the Commission')³ must exercise their functions in relation to the authorisation and regulation of the National Lottery⁴ in the manner they consider the most likely to secure that the National Lottery is run, and every lottery⁵ that forms part of it⁶ is promoted⁷, with all due propriety, and that the interests of every participant⁸ in a lottery that forms part of the National Lottery are protected⁹. Subject to this, the Secretary of State and the Commission must in exercising those functions do their best to secure that the net proceeds of the National Lottery¹⁰ are as great as possible¹¹.

1 In relation to functions under the Horserace Betting and Olympic Lottery Act 2004 Pt 3 (ss 21-37) (see note 4; and PARAS 698-699, 717-720, 735-738), a reference to the Secretary of State is to be treated as including a reference to the Paymaster General: s 34(1), (2)(aa) (added by SI 2007/2129). As to the Secretary of State see PARA 2; and as to the Paymaster General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 714. See also the Transfer of Functions (Olympics and Paralympics) Order 2007, SI 2007/2129, art 3(2)(a)(i), which provides for the concurrent exercise of their powers in connection with the 2004 Act.

2 Ie under the National Lottery etc Act 1993 s 11: see PARA 708. As to the making and revocation of directions under the National Lottery etc Act 1993 see PARA 7 note 27.

3 As to the National Lottery Commission see PARA 7.

4 Ie their functions under National Lottery etc Act 1993 Pt I (ss 1-20). As to the meaning of 'the National Lottery' see PARA 687. For these purposes, a reference to functions under Pt I is to be treated as including a reference to functions under the Horserace Betting and Olympic Lottery Act 2004 Pt 3: s 34(1), (2)(a).

5 As to the meaning of 'lottery' see PARA 687 note 1.

6 As to references to a lottery forming part of the National Lottery see PARA 687 notes 2, 13.

7 As to the meaning of 'promote' see PARA 687 note 4.

8 'Participant', in relation to a lottery, means a person who has bought a ticket or chance in the lottery: National Lottery etc Act 1993 s 20.

9 National Lottery etc Act 1993 s 4(1) (amended by virtue of the National Lottery Act 1998 Sch 1 para 4).

10 'The net proceeds of the National Lottery' means (1) at the date at which this volume states the law, the sums that are paid to the Secretary of State by virtue of the National Lottery etc Act 1993 s 5(6) (as originally enacted) (see PARA 691) (s 4(3) (as originally enacted)); (2) as from a day to be appointed by an order made under the National Lottery Act 2006 s 6 (see PARA 687), the sums paid into the National Lottery Distribution Fund under the National Lottery etc Act 1993 s 5(2)(c) (as prospectively substituted) (see PARA 694) (s 4(3) (prospectively amended by the National Lottery Act 2006 Sch 1 paras 1, 3; at the date at which this volume states the law, that amendment was not in force)). That definition of 'the net proceeds of the National Lottery' is to be treated as including a reference to sums paid into the Olympic Lottery Distribution Fund by virtue of the Horserace Betting and Olympic Lottery Act 2004 s 24 (see PARA 717): s 34(1), (2)(b).

- 11 National Lottery etc Act 1993 s 4(2) (amended by virtue of the National Lottery Act 1998 Sch 1 para 4).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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689. Consultation with the Gambling Commission.

If in the course of the exercise of its functions the National Lottery Commission¹ becomes aware of a matter about which the Gambling Commission² is likely to have an opinion, the National Lottery Commission must consult the Gambling Commission³.

The National Lottery Commission must comply with any direction of the Secretary of State⁴, which may be general or specific, to consult the Gambling Commission⁵.

1 As to the National Lottery Commission see PARA 7.

2 As to the Gambling Commission see PARA 4.

3 National Lottery etc Act 1993 s 4A(1) (s 4A added by the Gambling Act 2005 s 15(5), Sch 3 para 2).

4 As to the making and revocation of directions under the National Lottery etc Act 1993 see PARA 7 note 27; and as to the Secretary of State see PARA 2.

5 National Lottery etc Act 1993 s 4A(2) (as added: see note 3).

UPDATE

560-689 Power to make regulations ... Consultation with the Gambling Commission

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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690. Disclosure of information.

The Commissioners for Her Majesty's Revenue and Customs may disclose information to the National Lottery Commission ('the Commission')¹ and the Commission may disclose information to the Commissioners for Revenue and Customs². Information so disclosed must not be further disclosed except:

- 2424 (1) for the purpose of complying with an enactment;
- 2425 (2) in pursuance of an order of a court;
- 2426 (3) for the purpose of legal proceedings connected with the operation of an enactment relating to lotteries³;
- 2427 (4) with the consent of the Commissioners for Revenue and Customs;
- 2428 (5) with the consent of each person to whom the information relates; or
- 2429 (6) to the National Audit Office for the purposes of the exercise of functions under Part II⁴ of the National Audit Act 1983⁵.

The above provisions have effect despite any prohibition or restriction that would otherwise prevent disclosure of information⁶.

A person who is or was an officer or employee of the Commission, or who acts or acted on behalf of the Commission, commits an offence if he discloses information received from the Commissioners for Revenue and Customs in contravention of heads (1) to (6) above and the information relates to a person whose identity is specified in the disclosure, or can be deduced from it⁷. It is a defence for a person charged with such an offence of disclosing information to prove that he reasonably believed either that the disclosure was lawful, or that the information had already and lawfully been made available to the public⁸.

1 National Lottery etc Act 1993 s 4B(1) (ss 4B, 4C added by the National Lottery Act 2006 s 2). As to the National Lottery Commission see PARA 7.

2 National Lottery etc Act 1993 s 4B(2) (as added: see note 1).

3 As to the meaning of 'lottery' see PARA 687 note 1.

4 I.e. under the National Audit Act 1983 Pt II (ss 6-9): see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 717 et seq.

5 National Lottery etc Act 1993 s 4B(3), (4) (as added: see note 1).

6 National Lottery etc Act 1993 s 4B(5) (as added: see note 1).

7 National Lottery etc Act 1993 s 4C(1), (2) (as added: see note 1). A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or to both: s 4C(4) (as so added). In relation to a conviction occurring before the commencement of the Criminal Justice Act 2003 s 282 (not yet in force) (short sentences) the reference to 12 months has effect as if it were a reference to six months: National Lottery etc Act 1993 s 4C(5) (as so added).

8 National Lottery etc Act 1993 s 4C(3) (as added: see note 1).

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(iii) The Licensing System

A. THE EXISTING SYSTEM

691. Licensing of person to run the National Lottery.

At the date at which this volume states the law, the following provisions had effect.

The National Lottery Commission¹ may by licence authorise a person to run the National Lottery². Only one person may be licensed at any one time³. The Commission must not grant a licence unless an application in writing, containing such information as it has specified as necessary for enabling it to determine whether to grant the licence, has been made to it by such date as it has specified⁴. The Commission must not grant such a licence unless it is satisfied that the applicant is a fit and proper person to run the National Lottery⁵.

In determining whether to grant a licence, the Commission may consider whether any person who appears to it to be likely to manage the business or any part of the business of running the National Lottery under the licence is a fit and proper person to do so, and whether any person who appears to it to be likely to be a person for whose benefit that business would be carried on is a fit and proper person to benefit from it⁶.

A licence must include a condition requiring the licensee to pay into the National Lottery Distribution Fund⁷ sums out of the proceeds of lotteries⁸ forming part of the National Lottery⁹. It must also include provision for determining the amount and the timing of such payments¹⁰. A licence may include a condition requiring the licensee to make such arrangements as may be determined by or under the licence for securing that, in circumstances specified in the licence, such sums as may be so determined are paid to the Commission for distribution to participants¹¹ in lotteries forming part of the National Lottery¹².

As from a day to be appointed¹³, there will be a new licensing system introduced by the National Lottery Act 2006¹⁴.

1 As to the National Lottery Commission see PARA 7.

2 National Lottery etc Act 1993 s 5(1) (as originally enacted; s 5(1)-(5), (7) (as originally enacted) amended by virtue of the National Lottery Act 1998 Sch 1 para 4; the National Lottery etc Act 1993 s 5(1), (2), (4) (as originally enacted) further amended by the National Lottery Act 2006 s 3(b)). As to the meaning of 'the National Lottery' see PARA 687. The licence is a lengthy document containing a plethora of conditions dealing in detail with the running of the National Lottery, and in particular containing an advertising Code of Practice and a National Lottery Sales Code of Practice. See *R v National Lottery Commission, ex p Camelot Group plc* (2000) Times, 12 October, [2001] EMLR 43, DC (bids were received from two bidders, Camelot Group plc and the People's Lottery; the Commission excluded Camelot Group plc from future negotiations for the licence but on application for judicial review it was held that the Commission's decision to negotiate exclusively with the People's Lottery was in the circumstances so unfair as to amount to an abuse of power or to be *Wednesbury* unreasonable (see *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223, [1948] 2 All ER 680, CA; and **JUDICIAL REVIEW** vol 61 (2010) PARA 617). As to judicial review see **CIVIL PROCEDURE** vol 12 (2009) PARA 1530; **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

The Horserace Totalisator Board may hold a licence under the National Lottery etc Act 1993 s 5 or may hold an interest in a body corporate, the only or principal object of which is the holding of a licence under s 5: s 17(1), (2) (s 17 prospectively repealed by the Horserace Betting and Olympic Lottery Act 2004 Sch 2 para 21, Sch 6, as from a day to be appointed under s 40(1); at the date at which this volume states the law, no such day had

been appointed and that repeal was not in force). The reference to holding an interest in a body corporate is to holding, or being beneficially entitled to, shares in that body or to possessing voting power in that body: National Lottery etc Act 1993 s 17(3) (as so repealed). As to the Horserace Totalisator Board and its prospective abolition see PARA 9.

3 National Lottery etc Act 1993 s 5(2) (as originally enacted and amended: see note 2).

4 National Lottery etc Act 1993 s 5(3) (as originally enacted and amended: see note 2).

5 National Lottery etc Act 1993 s 5(4) (as originally enacted and amended: see note 2).

6 National Lottery etc Act 1993 s 5(5) (as originally enacted and amended: see note 2).

The Rehabilitation of Offenders Act 1974 s 4(1) (exclusion of evidence and questions relating to an individual's previous convictions) (see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 660) does not apply in relation to any proceedings before the Commission in respect of the grant or revocation of a licence, or by way of appeal to the Secretary of State against the revocation of a licence by the Commission: National Lottery etc Act 1993 s 19(1) (amended by virtue of the National Lottery Act 1998 Sch 1 para 4; the National Lottery etc Act 1993 s 19 prospectively repealed by the Police Act 1997 ss 133(d), 134(2), Sch 10, as from a day to be appointed under s 135; at the date at which this volume states the law, no such day had been appointed and that repeal was not in force). A conviction is not regarded as spent for the purposes of the Rehabilitation of Offenders Act 1974 s 4(2) (restrictions in respect of such questions put otherwise than in proceedings) if the question is put by the Commission for the purpose of determining whether to grant or revoke a licence and relates to an individual managing the business or part of it, or for whose benefit the business is carried on: see the National Lottery etc Act 1993 s 19(2)-(4) (as so amended and repealed). When the question is asked, the person questioned must be informed that all his previous convictions are to be disclosed: s 19(5) (as so repealed). As to the Secretary of State see PARA 2.

7 As to the National Lottery Distribution Fund see PARA 713.

8 As to the meaning of 'lottery' see PARA 687 note 1.

9 National Lottery etc Act 1993 s 5(6) (s 5(6) substituted, and s 5(6A) added, by the Horserace Betting and Olympic Lottery Act 2004 s 34(1), (3), (4)). For transitional provisions see the Horserace Betting and Olympic Lottery Act 2004 s 34(4).

10 National Lottery etc Act 1993 s 5(6A) (as added: see note 9).

11 As to the meaning of 'participant' see PARA 688 note 8.

12 National Lottery etc Act 1993 s 5(7) (as originally enacted and amended: see note 2). For the fee to be paid on the granting of a licence under the National Lottery etc Act 1993 s 5 see the National Lottery (Licence Fees) Order 2001, SI 2001/2506, art 2.

13 Ie under the National Lottery Act 2006 s 6(1): see PARA 687. At the date at which this volume states the law, no such day had been appointed.

14 See PARAS 694-696.

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692. Licensing of persons to promote lotteries.

At the date at which this volume states the law, the following provisions had effect.

The National Lottery Commission ('the Commission')¹ may by licence authorise a person to promote² lotteries³ as part of the National Lottery⁴. Such a licence must specify the lotteries, or descriptions of lottery, the promotion of which it authorises⁵. The Commission must not grant such a licence unless an application in writing, containing such information as it has specified as necessary for enabling it to determine whether to grant a licence, has been made to it⁶. Nor must it grant such a licence unless it is satisfied that the applicant is a fit and proper person to promote lotteries under the licence⁷.

In determining whether to grant such a licence, the Commission may consider whether any person who appears to it to be likely to manage the business or any part of the business of promoting lotteries under the licence is a fit and proper person to do so, and whether any person who appears to it to be likely to be a person for whose benefit that business would be carried on is a fit and proper person to benefit from it⁸.

A licence may include a condition requiring the licensee to obtain the Commission's approval of the rules of any lottery before the lottery is promoted under the licence⁹.

As from a day to be appointed¹⁰, there will be a new licensing system introduced by the National Lottery Act 2006¹¹.

1 As to the National Lottery Commission see PARA 7.

2 As to the meaning of 'promote' see PARA 687 note 4.

3 As to the meaning of 'lottery' see PARA 687 note 1.

4 National Lottery etc Act 1993 s 6(1) (as originally enacted; s 6(1), (3)-(6) amended by virtue of the National Lottery Act 1998 Sch 1 para 4; the National Lottery etc Act 1993 s 6(1), (2), (4) amended by the National Lottery Act 2006 s 3(c)). As to the meaning of 'the National Lottery' see PARA 687.

The Horserace Totalisator Board may hold a licence under the National Lottery etc Act 1993 s 6 or may hold an interest in a body corporate, the only or principal object of which is the holding of a licence under s 6: s 17(1), (2) (s 17 prospectively repealed by the Horserace Betting and Olympic Lottery Act 2004 Sch 2 para 21, Sch 6, as from a day to be appointed under s 40(1); at the date at which this volume states the law, no such day had been appointed and that repeal was not in force). The reference to holding an interest in a body corporate is to holding, or being beneficially entitled to, shares in that body or to possessing voting power in that body: National Lottery etc Act 1993 s 17(3) (as so repealed). As to the Horserace Totalisator Board and its prospective abolition see PARA 9.

5 National Lottery etc Act 1993 s 6(2) (as originally enacted).

6 National Lottery etc Act 1993 s 6(3) (as originally enacted and amended: see note 4).

7 National Lottery etc Act 1993 s 6(4) (as originally enacted and amended: see note 4).

8 National Lottery etc Act 1993 s 6(5) (as originally enacted and amended: see note 4). As to the consideration of criminal convictions by the Commission see PARA 691 note 6.

9 National Lottery etc Act 1993 s 6(6) (as originally enacted and amended: see note 4). For the fee to be paid on the granting of a licence under the National Lottery etc Act 1993 s 6 see the National Lottery (Licence Fees) Order 2001, SI 2001/2506, art 3.

10 le under the National Lottery Act 2006 s 6(1): see PARA 687. At the date at which this volume states the law, no such day had been appointed.

11 See PARAS 694-696.

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693. Further provision in relation to licences.

At the date at which this volume states the law, the following provisions had effect.

A licence to run the National Lottery¹ or promote lotteries as part of the National Lottery² must be in writing and must specify the period for which (subject to being revoked or suspended) it is to have effect³. The period must begin with the date of the grant of the licence and must not exceed 15 years⁴. Subject to that restriction, such a licence may include provision enabling the specified period to be extended either by the National Lottery Commission ('the Commission')⁵, or by agreement between the Commission and the licensee⁶.

Such a licence may include such conditions⁷ as the Commission considers appropriate and in particular may include conditions requiring the licensee:

- 2430 (1) to obtain the consent of the Commission before doing anything specified, or of a description specified, in the licence⁸;
- 2431 (2) to refer matters to the Commission for approval⁹;
- 2432 (3) to ensure that such requirements as the Commission may from time to time determine or approve are complied with¹⁰;
- 2433 (4) to provide the Commission at times specified by it with such information as it may require (including, if the information is of a description specified in the licence, information for publication by it)¹¹;
- 2434 (5) to allow the Commission to inspect and take copies of any documents of the licensee, including any information kept by the licensee otherwise than in writing, relating to the National Lottery or a lottery forming part of it¹²;
- 2435 (6) where such information is kept by means of a computer, to give the Commission such assistance as it may require to enable it to inspect and take copies of the information in a visible and legible form or to inspect and check the operation of any computer, and any associated apparatus or material, that is or has been in use in connection with the keeping of the information¹³;
- 2436 (7) to do such things (and, in particular, to effect such transfers of property or rights) as the Commission may require in connection with the licence ceasing to have effect and the grant of a licence to another person¹⁴.

Conditions in such a licence may impose requirements to be complied with by the licensee after the licence has ceased to have effect¹⁵.

On the granting of such a licence, the licensee was to pay to the Commission a fee of such amount as the Secretary of State¹⁶ might by order prescribe¹⁷. All fees received by the Commission were to be paid into the Consolidated Fund¹⁸.

As from a day to be appointed¹⁹, there will be a new licensing system introduced by the National Lottery Act 2006²⁰.

¹ ie a licence under the National Lottery etc Act 1993 s 5 (as that provision has effect in relation to the existing licensing system): see PARA 691. As to the meaning of 'the National Lottery' see PARA 687.

2 le a licence under the National Lottery etc Act 1993 s 6 (as that provision has effect in relation to the existing licensing system): see PARA 692. As to the meaning of 'promote' see PARA 687 note 4; and as to the meaning of 'lottery' see PARA 687 note 1.

3 National Lottery etc Act 1993 s 7(1) (as originally enacted).

4 National Lottery etc Act 1993 s 7(1A) (s 7(1A), (1B) as added by the National Lottery Act 2006 s 4(1)).

5 As to the National Lottery Commission see PARA 7.

6 National Lottery etc Act 1993 s 7(1B) (as added: see note 4).

7 le in addition to those required or authorised by National Lottery etc Act 1993 s 5 (as that provision has effect in relation to the existing licensing system) (see PARA 691) or s 6 (as that provision has effect in relation to the existing licensing system) (see PARA 692).

8 National Lottery etc Act 1993 s 7(2)(a) (as originally enacted; s 7(2), (3) amended by virtue of the National Lottery Act 1998 Sch 1 para 4; the National Lottery etc Act 1993 s 7(2) further amended by the National Lottery Act 2006 ss 3(d), 4(2)).

9 National Lottery etc Act 1993 s 7(2)(b) (as originally enacted and amended: see note 8).

10 National Lottery etc Act 1993 s 7(2)(c) (as originally enacted and amended: see note 8).

11 National Lottery etc Act 1993 s 7(2)(d) (as originally enacted and amended: see note 8).

12 National Lottery etc Act 1993 s 7(2)(e) (as originally enacted and amended: see note 8). As to references to a lottery forming part of the National Lottery see PARA 687 notes 2, 13. In s 7(2)(e), (f) (see heads (5)-(6) in the text), 'the Commission' includes any representative of the Commission, as well as any member of its staff, who has been authorised by it (whether generally or specially) to make such an inspection: s 7(3) (as originally enacted and amended: see note 8).

13 National Lottery etc Act 1993 s 7(2)(f) (as originally enacted and amended: see note 8). See also note 12.

14 National Lottery etc Act 1993 s 7(2)(g) (as originally enacted and amended: see note 8).

15 National Lottery etc Act 1993 s 7(4) (as originally enacted).

16 As to the Secretary of State see PARA 2.

17 See the National Lottery etc Act 1993 s 7(5) (s 7(5), (6) repealed by the National Lottery Act 2006 ss 5(2), 21, Sch 3; s 21, Sch 3 came into force on 1 December 2006 (see the National Lottery Act 2006 (Commencement No 3) Order 2006, SI 2006/3201, art 2(e)) and it is apprehended that the failure to bring the National Lottery Act 2006 s 5(2) into force was due to a drafting error). For the prescribed fees see the National Lottery (Licence Fees) Order 2001, SI 2001/2506, arts 2, 3.

18 See the National Lottery etc Act 1993 s 7(6) (repealed: see note 17).

19 le under the National Lottery Act 2006 s 6(1): see PARA 687. At the date at which this volume states the law, no such day had been appointed.

20 See PARAS 694-696.

UPDATE

693 Further provision in relation to licences

NOTE 17--National Lottery Act 2006 s 5 in force 6 January 2010: SI 2010/2.

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B. THE NEW SYSTEM TO BE INTRODUCED BY THE NATIONAL LOTTERY ACT 2006

694. Licence to promote lottery.

As from a day to be appointed¹, the following provisions will have effect.

The National Lottery Commission ('the Commission')² may by licence authorise a person to promote a lottery³. A licence:

- 2437 (1) may make provision about any matter connected with the promotion of a lottery, including, in particular, arrangements for advertising, for the sale of tickets, for the distribution of prizes or for compliance with a provision of the National Lottery etc Act 1993⁴;
- 2438 (2) may, in particular, require the licensee to obtain in advance the Commission's approval of the rules of a lottery⁵, and to pay a fee of such amount as may be prescribed by regulations made by the Secretary of State⁶ in respect of an application for approval of the rules of a lottery⁷;
- 2439 (3) must include a condition requiring the licensee to pay into the National Lottery Distribution Fund⁸ sums out of the proceeds of any lottery promoted in reliance on the licence⁹;
- 2440 (4) must include provision for determining the amount and the timing of payments under head (3) above¹⁰;
- 2441 (5) may include provision requiring the licensee to make arrangements, which may include payments to the Commission, for securing the payment of prizes in certain circumstances¹¹.

No more than one licence may be issued in relation to any one lottery¹²; but:

- 2442 (a) a licence may relate to one or more specified lotteries or to lotteries of a specified description¹³;
- 2443 (b) a person may hold more than one licence at a time¹⁴; and
- 2444 (c) a licence may require or permit the holder to make arrangements with another person for the performance of specified functions¹⁵.

The Commission may issue a licence under the above provisions to a person only if:

- 2445 (i) he has applied in writing for the licence;
- 2446 (ii) he has supplied such information or documents in or with the application as the Commission directs;
- 2447 (iii) having considered the application the Commission is satisfied that the applicant is a suitable person to promote the lottery or lotteries to which the licence relates¹⁶; and
- 2448 (iv) the Commission has complied with any relevant regulations¹⁷ with regard to competition for licences¹⁸.

At the date at which this volume states the law, the above provisions were not in force.

- 1 le under the National Lottery Act 2006 s 6(1): see PARA 687. At the date at which this volume states the law, no such day had been appointed.
- 2 As to the National Lottery Commission see PARA 7.
- 3 National Lottery etc Act 1993 s 5(1) (ss 5, 6 prospectively substituted by the National Lottery Act 2006 Sch 1 paras 1, 4, as from a day to be appointed (see note 1); at the date at which this volume states the law, that substitution was not in force). As to the meaning of 'promote' see PARA 687 note 4; and as to the meaning of 'lottery' see PARA 687 note 1.
- 4 National Lottery etc Act 1993 s 5(2)(a) (as prospectively substituted: see note 3).
- 5 National Lottery etc Act 1993 s 5(2)(b)(i) (as prospectively substituted: see note 3).
- 6 As to the Secretary of State see PARA 2.
- 7 National Lottery etc Act 1993 s 5(2)(b)(ii) (as prospectively substituted: see note 3).
- 8 As to the National Lottery Distribution Fund see PARA 713.
- 9 National Lottery etc Act 1993 s 5(2)(c) (as prospectively substituted: see note 3).
- 10 National Lottery etc Act 1993 s 5(2)(d) (as prospectively substituted: see note 3).
- 11 National Lottery etc Act 1993 s 5(2)(e) (as prospectively substituted: see note 3).
- 12 National Lottery etc Act 1993 s 5(3) (as prospectively substituted: see note 3).
- 13 National Lottery etc Act 1993 s 5(3)(a) (as prospectively substituted: see note 3).
- 14 National Lottery etc Act 1993 s 5(3)(b) (as prospectively substituted: see note 3).
- 15 National Lottery etc Act 1993 s 5(2)(c) (as prospectively substituted: see note 3).
- 16 For the purposes of the National Lottery etc Act 1993 s 6(1)(c) (see head (iii) in the text) the Commission may, in particular, have regard to (1) the integrity of the applicant or of a person relevant to the application; (2) the competence of the applicant or of any person relevant to the application; (3) the financial and other circumstances of the applicant or of a person relevant to the application: s 6(2) (as prospectively substituted: see note 3). A person is relevant to an application under s 5 for these purposes if, in particular (a) he is likely to exercise a function in connection with the promotion of a lottery in reliance on the licence applied for; or (b) he is likely to have an interest in a lottery promoted in reliance on the licence applied for: s 6(3) (as so substituted).
- 17 le any relevant regulations under the National Lottery etc Act 1993 s 6A: see PARA 695.
- 18 National Lottery etc Act 1993 s 6(1) (as prospectively substituted: see note 3). Section 6(1) is subject to section 6A(3) (see PARA 695): s 6(1)(d) (as so substituted).

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695. Competition for licences.

As from a day to be appointed¹, the following provisions will have effect.

The National Lottery Commission ('the Commission')² may not issue a licence to promote a lottery³ unless it has complied, in relation to the licence, with regulations of the Secretary of State⁴ about inviting competing applications for licences⁵. The regulations must, in particular, make provision about the publication of invitations (including provision as to the manner and timing of publication and the matters to be published), and about the timing of responses⁶. Before making such regulations the Secretary of State must consult the Commission⁷.

Where an application for a licence to promote a lottery⁸ relates to a lottery already licensed the Commission may, however, issue the licence without complying with the regulations, whether or not compliance has begun, if the Commission thinks:

- 2449 (1) it is likely to be in the interests of compliance with the duty⁹ to secure that the net proceeds of the National Lottery¹⁰ are as great as possible; or
- 2450 (2) it is necessary in order to prevent the lapse of the lottery¹¹.

Where a licence is issued in reliance on head (2) above, the period specified for the duration of the licence¹² must be no longer than the Commission thinks necessary to enable a further licence to be issued having complied with the regulations¹³.

The above provisions will apply to a variation of a licence which expands the class of authorised activities as they will apply to the issue of a licence¹⁴. At the date at which this volume states the law, however, the above provisions were not in force.

1 Ie under the National Lottery Act 2006 s 6(1): see PARA 687. At the date at which this volume states the law, no such day had been appointed.

2 As to the National Lottery Commission see PARA 7.

3 Ie a licence under the National Lottery etc Act 1993 s 5 (as that provision has effect in relation to the new licensing system to be introduced by the National Lottery Act 2006): see PARA 694. As to the meaning of 'promote' see PARA 687 note 4; and as to the meaning of 'lottery' see PARA 687 note 1.

4 As to the Secretary of State see PARA 2.

5 National Lottery etc Act 1993 s 6A(1) (s 6A prospectively added by the National Lottery Act 2006 Sch 1 paras 1, 4, as from a day to be appointed (see note 1); at the date at which this volume states the law, Sch 1 paras 1, 4 were not in force).

6 National Lottery etc Act 1993 s 6A(2) (as prospectively added: see note 5).

7 National Lottery etc Act 1993 s 6A(6) (as prospectively added: see note 5).

8 See note 3.

9 Ie the duty under the National Lottery etc Act 1993 s 4(2): see PARA 688.

10 As to the National Lottery see PARA 687.

- 11 National Lottery etc Act 1993 s 6A(3) (as prospectively added: see note 5).
- 12 ie the period specified under the National Lottery etc Act 1993 s 7(1A): see *PARA 696*.
- 13 National Lottery etc Act 1993 s 6A(4) (as prospectively added: see note 5).
- 14 National Lottery etc Act 1993 s 6A(5) (as prospectively added: see note 5).

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696. Further provision in relation to licences.

As from a day to be appointed¹, the following provisions will have effect.

A licence to promote a lottery² must be in writing³ and must specify a period during which it has effect, unless revoked or suspended, beginning with the date of issue and not exceeding 15 years⁴. Subject to that restriction as to its duration, such a licence may include provision enabling the specified period to be extended either by the National Lottery Commission ('the Commission')⁵ or by agreement between the Commission and the licensee⁶.

Such a licence may include such conditions⁷ as the Commission considers appropriate and in particular may include conditions requiring the licensee:

- 2451 (1) to obtain the consent of the Commission before doing anything specified, or of a description specified, in the licence⁸;
- 2452 (2) to refer matters to the Commission for approval⁹;
- 2453 (3) to ensure that such requirements as the Commission may from time to time determine or approve are complied with¹⁰;
- 2454 (4) to provide the Commission at times specified by it with such information as it may require (including, if the information is of a description specified in the licence, information for publication by it)¹¹;
- 2455 (5) to allow the Commission to inspect and take copies of any documents of the licensee, including any information kept by the licensee otherwise than in writing, relating to the National Lottery or a lottery forming part of it¹²;
- 2456 (6) where such information is kept by means of a computer, to give the Commission such assistance as it may require to enable it to inspect and take copies of the information in a visible and legible form or to inspect and check the operation of any computer, and any associated apparatus or material, that is or has been in use in connection with the keeping of the information¹³;
- 2457 (7) to do such things (and, in particular, to effect such transfers of property or rights) as the Commission may require in connection with the licence ceasing to have effect and the grant of a licence to another person¹⁴.

Conditions under heads (1) to (7) above, or requirements under head (3) above, may, in particular, require the holder of such a licence:

- 2458 (a) to provide information in connection with the licensed activities to:
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 - 281. (i) the holder of another such licence;
 - 282. (ii) a person who is applying, or considering whether to apply, for such a licence; or
 - 283. (iii) such other person as the condition or requirement may specify or may enable the Commission to specify¹⁵;
- 178 2459 (b) to make facilities in connection with the licensed activities available to:
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- 284. (i) the holder of another such licence;
 - 285. (ii) a person who is applying, or considering whether to apply, for such a licence; or
 - 286. (iii) such other person as the condition or requirement may specify or may enable the Commission to specify¹⁶;
- 180
- 2460 (c) to co-operate with the holder of another such licence in a specified matter¹⁷;
 - 2461 (d) to participate in or co-operate with arrangements designed for the purposes of holders of such licences generally, or of a class of holders of such licences generally¹⁸;
 - 2462 (e) not to enter into an arrangement of a specified kind that would or might be harmful to the interests of the holder of another such licence¹⁹.

Conditions in such a licence may impose requirements to be complied with by the licensee after the licence has ceased to have effect²⁰.

The holder of such a licence must:

- 2463 (A) pay a first annual fee²¹ to the Commission within such period after the issue of the licence as may be prescribed²²; and
- 2464 (B) pay an annual fee to the Commission before each anniversary of the issue of the licence²³.

The Commission must pay fees received by virtue of heads (A) and (B) above into the Consolidated Fund²⁴.

At the date at which this volume states the law, the above provisions either were not in force or, where they were in force, did not have effect in the form in which they are set out in this paragraph.

1 Ie under the National Lottery Act 2006 s 6(1): see PARA 687. See also s 22. At the date at which this volume states the law, no such day had been appointed.

2 Ie a licence under the National Lottery etc Act 1993 s 5 (as that provision has effect in relation to the new licensing system to be introduced by the National Lottery Act 2006): see PARA 694. As to the meaning of 'promote' see PARA 687 note 4; and as to the meaning of 'lottery' see PARA 687 note 1.

3 National Lottery etc Act 1993 s 7(1) (s 7(1), (1A) prospectively substituted by the National Lottery Act 2006 Sch 1 paras 1, 5(1), (2), as from a day to be appointed (see note 1); at the date at which this volume states the law, that substitution was not in force).

4 National Lottery etc Act 1993 s 7(1A) (as prospectively substituted: see note 3).

5 As to the National Lottery Commission see PARA 7.

6 National Lottery etc Act 1993 s 7(1B) (added by the National Lottery Act 2006 s 4(1); the National Lottery etc Act 1993 s 7(1B), (2), (4) prospectively amended by the National Lottery Act 2006 Sch 1 paras 1, 5(1), (3), (4), (6)).

7 Ie in addition to those required or authorised by National Lottery etc Act 1993 s 5 (as that provision has effect in relation to the new licensing system to be introduced by the National Lottery Act 2006): see PARA 694.

8 National Lottery etc Act 1993 s 7(2)(a) (as prospectively amended (see note 6); s 7(2), (3) also amended by virtue of the National Lottery Act 1998 Sch 1 para 4).

9 National Lottery etc Act 1993 s 7(2)(b) (as amended (see note 8) and prospectively amended (see note 6)).

- 10 National Lottery etc Act 1993 s 7(2)(c) (as amended (see note 8) and prospectively amended (see note 6)).
- 11 National Lottery etc Act 1993 s 7(2)(d) (as amended (see note 8) and prospectively amended (see note 6)).
- 12 National Lottery etc Act 1993 s 7(2)(e) (as amended (see note 8) and prospectively amended (see note 6)). As to references to a lottery forming part of the National Lottery see PARA 687 notes 2, 13. In s 7(2)(e), (f) (see heads (5)-(6) in the text), 'the Commission' includes any representative of the Commission, as well as any member of its staff, who has been authorised by it (whether generally or specially) to make such an inspection: s 7(3) (as amended: see note 8).
- 13 National Lottery etc Act 1993 s 7(2)(f) (as amended (see note 8) and prospectively amended (see note 6)).
- 14 National Lottery etc Act 1993 s 7(2)(g) (as amended (see note 8) and prospectively amended (see note 6)).
- 15 National Lottery etc Act 1993 s 7(3A)(a) (s 7(3A) prospectively added by the National Lottery Act 2006 Sch 1 paras 1, 5(1), (5), as from a day to be appointed (see note 1); at the date at which this volume states the law, no such day had been appointed and Sch 1 paras 1, 5(1), (5) were not in force).
- 16 National Lottery etc Act 1993 s 7(3A)(b) (as prospectively added: see note 15).
- 17 National Lottery etc Act 1993 s 7(3A)(c) (as prospectively added: see note 15).
- 18 National Lottery etc Act 1993 s 7(3A)(d) (as prospectively added: see note 15).
- 19 National Lottery etc Act 1993 s 7(3A)(e) (as prospectively added: see note 15).
- 20 National Lottery etc Act 1993 s 7(4) (as prospectively amended: see note 6).
- 21 For these purposes, 'annual fee' means a fee of such amount as may be prescribed, and 'prescribed' means prescribed by regulations made by the Secretary of State: National Lottery etc Act 1993 s 7A(2) (s 7A prospectively added by the National Lottery Act 2006 s 5(1), as from a day to be appointed (see note 1); at the date at which this volume states the law, no such day had been appointed and s 5 was not in force). As to the Secretary of State see PARA 2.
- 22 National Lottery etc Act 1993 s 7A(1)(a) (as prospectively added (see note 21); s 7A(1) prospectively amended by the National Lottery Act 2006 Sch 1 paras 1, 6, as from a day to be appointed (see note 1); at the date at which this volume states the law, no such day had been appointed and that amendment was not in force).
- 23 National Lottery etc Act 1993 s 7A(1)(b) (as prospectively added (see note 21) and amended (see note 22)). Section 7A(1)(b) (see head (b) in the text) does not apply in relation to an anniversary of the issue of a licence on or immediately before which the licence ceases, by virtue of its terms, to have effect: s 7A(3) (as prospectively added: see note 21).
- 24 National Lottery etc Act 1993 s 7A(4) (as prospectively added: see note 21).

UPDATE

696 Further provision in relation to licences

NOTES 21-23--See National Lottery (Annual Licence Fees) Regulations 2010, SI 2010/17.

NOTE 21--National Lottery Act 2006 s 5 in force 6 January 2010: SI 2010/2.

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C. LICENSING OF OLYMPIC LOTTERIES

697. Provision to be included in licence to run the National Lottery.

A licence to run the National Lottery¹ must include provision:

- 2465 (1) for determining in respect of any period the proportion of proceeds of lotteries forming part of the National Lottery that is attributable to Olympic Lotteries; or
- 2466 (2) enabling the National Lottery Commission ('the Commission')² to determine that proportion in respect of any period³.

In respect of such a licence that had effect on 8 April 2005⁴, the Commission was under a duty, after consulting the licensee, to vary the licence so as to introduce provision of a kind specified in head (1) or head (2) above⁵. The variation was to take effect at such time as the Commission specified, whether or not the licensee consented⁶.

The Secretary of State⁷ or the Paymaster General may by order make such provision as he thinks necessary or expedient in consequence of a change effected after 28 October 2004⁷ in the arrangements made by the International Olympic Committee in relation to the Games of the Olympiad⁸.

¹ I.e. a licence under the National Lottery etc Act 1993 s 5 (as that provision has effect in relation to the existing licensing system): see PARA 691. As to the National Lottery see PARA 687.

² As to the National Lottery Commission see PARA 7.

³ Horserace Betting and Olympic Lottery Act 2004 s 21(2) (prospectively repealed by the National Lottery Act 2006 Sch 1 para 16(1), (2)(b), as from a day to be appointed under s 6(1) (see PARA 687); at the date at which this volume states the law, no such day had been appointed and that repeal was not in force).

⁴ I.e. the date when the Horserace Betting and Olympic Lottery Act 2004 s 21 came into force: see the Horserace Betting and Olympic Lottery Act 2004 (Commencement No 2) Order 2005, SI 2005/1134, art 2.

⁵ See the Horserace Betting and Olympic Lottery Act 2004 s 21(3)(a).

⁶ See the Horserace Betting and Olympic Lottery Act 2004 s 21(3)(b).

⁷ I.e. after the passing of the Horserace Betting and Olympic Lottery Act 2004.

⁸ Horserace Betting and Olympic Lottery Act 2004 s 35(1). Such an order may, in particular, amend a provision of Pt 3 (ss 21-37, Sch 5) (see the text and notes 1-7; and PARA 698 et seq) or of any other enactment: s 35(2).

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698. Designation of promoter's licence as an Olympic Lottery.

A promoter's licence issued by the National Lottery Commission ('the Commission')¹ may designate a lottery² to which the licence relates as an Olympic Lottery³. Such a licence which so designates a lottery⁴ must include a condition prohibiting the promotion of an Olympic Lottery unless the Secretary of State⁵ has by order declared that the International Olympic Committee has elected London as the host city for the 2012 Olympic Games⁶. Such a declaration was made on 6 July 2005 and came into force on the following day⁷.

If the Secretary of State or the Paymaster General by order declares that the election of London by the International Olympic Committee as the host city for the 2012 Olympic Games has been revoked, then such a licence which so designates a lottery⁸ ceases to have effect in so far as it relates to an Olympic Lottery on such date as may be specified in the order⁹, and the Commission may not grant such a licence which so designates a lottery¹⁰.

If the Secretary of State or the Paymaster General by order specifies a date as the termination date for these purposes:

- 2467 (1) any such licence which so designates a lottery¹¹ that has effect immediately before the termination date is to cease to have effect on that date in so far as it relates to an Olympic Lottery; and
- 2468 (2) the Commission may not grant such a licence which so designates a lottery in respect of a period of time falling wholly or partly on or after the termination date¹².

1 le (1) at the date at which this volume states the law, a licence under the National Lottery etc Act 1993 s 6 as that provision has effect in relation to the existing licensing system (see PARA 692) or (2) as from a day to be appointed under the National Lottery Act 2006 s 6(1) (see PARA 687), a licence under the National Lottery etc Act 1993 s 5 as that provision has effect in relation to the new licensing system to be introduced under the 2006 Act (see PARA 694): see the Horserace Betting and Olympic Lottery Act 2004 s 21(1) (prospectively amended by the National Lottery Act 2006 Sch 1 paras 16(1), (2)(a), as from a day to be so appointed, so as to replace the reference to a licence under the National Lottery etc Act 1993 s 6 (see head (1) above) with a reference to a licence under s 5 (see head (2) above); at the date at which this title state the law, no such day had been appointed and that amendment was not in force). As to the National Lottery Commission see PARA 7.

2 As to the meaning of 'lottery' see PARA 687 note 1.

3 See the Horserace Betting and Olympic Lottery Act 2004 s 21(1) (as prospectively amended: see note 1). A designation under s 21(1) may be made only while provision under s 21(2) (see PARA 697) has effect: s 21(3) (prospectively repealed by the National Lottery Act 2006 Sch 1 para 16(1), (2)(b), as from a day to be appointed under s 691) (see PARA 687); at the date at which this volume states the law, no such day had been appointed and that repeal was not in force).

4 le a licence to which the Horserace Betting and Olympic Lottery Act 2004 s 22 applies. Section 22 applies to: (1) at the date at which this volume states the law, a licence under the National Lottery etc Act 1993 s 6 as that provision has effect in relation to the existing licensing system (see PARA 692) or (2) as from a day to be appointed under the National Lottery Act 2006 s 6(1) (see PARA 687), a licence under the National Lottery etc Act 1993 s 5 as that provision has effect in relation to the new licensing system to be introduced under the 2006 Act (see PARA 694), which (in either case) designates a lottery to which the licence relates as an Olympic Lottery: see the Horserace Betting and Olympic Lottery Act 2004 s 22(1) (prospectively amended by the National Lottery Act 2006 Sch 1 paras 16(1), (3), as from a day to be so appointed, so as to replace the reference to a licence under the National Lottery etc Act 1993 s 6 (see head (1) above) with a reference to a

licence under s 5 (see head (2) above); at the date at which this title state the law, no such day had been appointed and that amendment was not in force).

5 As to the Secretary of State see PARA 2.

6 Horserace Betting and Olympic Lottery Act 2004 s 22(2). In Pt 3 (ss 21-37, Sch 5), a reference to the 2012 Olympic Games is a reference to (1) the Games of the Olympiad that are to take place in the year 2012; and (2) except where the context otherwise requires, the Paralympic Games that are to take place in that year (s 33(1)(a)); and 'the Paralympic Games' means the events known by that name and in connection with which the Organising Committee has functions by virtue of an agreement between that committee and the International Olympic Committee (s 33(1)(d)). 'The Organising Committee' means the Organising Committee established by the National Olympic Committee of the United Kingdom: see s 33(1)(b), (c). Any expression used in connection with the Olympic Games (including an expression mentioned in s 33) has the meaning which it has in or in accordance with the Olympic Charter of the International Olympic Committee (as it has effect from time to time): s 33(1)(f). As to changes in Olympic procedure see PARA 697 text and notes 7-8.

7 See the Olympic Lotteries (Declaration that London is to host the 2012 Olympic Games) Order 2005, SI 2005/1830, arts 1, 2.

8 See note 4.

9 Horserace Betting and Olympic Lottery Act 2004 s 22(3)(b), (4)(a).

10 Horserace Betting and Olympic Lottery Act 2004 s 22(3)(b), (4)(b).

11 See note 4.

12 Horserace Betting and Olympic Lottery Act 2004 s 22(5) (amended by SI 2007/2129).

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D. ANNUAL LEVIES

699. Payment of annual levy to the Gambling Commission.

The Secretary of State¹ may make regulations requiring holders of licences relating to the National Lottery² to pay an annual levy to the Gambling Commission³. He may make such regulations only if he has made regulations under the Gambling Act 2005 requiring holders of operating licences⁴ to pay an annual levy to the Gambling Commission⁵, and he has consulted the National Lottery Commission⁶.

The regulations must, in particular, make provision for timing of payment of the levy and the amount of the levy⁷. They may, in particular, make provision:

- 2469 (1) determining the amount of the levy by reference to a percentage of specified receipts of the holder of such a licence⁸;
- 2470 (2) determining the amount of the levy by reference to a percentage of specified profits of the holder of such a licence⁹;
- 2471 (3) providing for the determination of the amount of the levy according to a specified formula¹⁰; or
- 2472 (4) providing for the determination of the amount of the levy in some other way¹¹.

Any sum due by way of levy by virtue of these provisions is to be treated for the statutory purposes¹² as if its payment were a condition of the licence¹³ in question¹⁴.

The Gambling Commission must, with the consent of the Treasury and of the Secretary of State, expend money received by way of levy for purposes related to, or by providing financial assistance¹⁵ for projects related to:

- 2473 (a) addiction to gambling;
- 2474 (b) other forms of harm or exploitation associated with gambling; or
- 2475 (c) any of the licensing objectives¹⁶ for the purposes of the Gambling Act 2005¹⁷.

The Gambling Commission must consult the National Lottery Commission before incurring expenditure under heads (a) to (c) above¹⁸.

1 As to the Secretary of State see PARA 2.

2 (1) holders of licences (1) at the date at which this volume states the law, under the National Lottery etc Act 1993 s 5 or s 6 (as those provisions have effect in relation to the existing licensing system) (see PARAS 691-692); or (2) as from a day to be appointed under the National Lottery Act 2006 s 6(1) (see PARA 687), under the National Lottery etc Act 1993 s 5 (as that provision has effect in relation to the new licensing system to be introduced by the 2006 Act) (see PARA 694): see the National Lottery etc Act 1993 s 10C(1) (s 10C added by the Gambling Act 2005 Sch 3 para 1; the National Lottery etc Act 1993 s 10C(1), (3), (5) prospectively amended, so as to substitute for a reference to licences or a licence under s 5 or s 6 (see head (1) above) a reference to a licence under s 5 (see head (2) above), by the National Lottery Act 2006 Sch 1 paras 1, 11, as from a day to be

so appointed; at the date at which this volume states the law, no such day had been appointed and that amendment was not in force). As to the National Lottery see PARA 687.

3 See the National Lottery etc Act 1993 s 10C(1) (as added and prospectively amended: see note 2). As to the Gambling Commission see PARA 4. At the date at which this volume states the law, no such regulations had been made.

4 As to operating licences see PARA 349 et seq.

5 As to the power to make such regulations see PARA 399.

6 National Lottery etc Act 1993 s 10C(7) (as added: see note 2). As to the National Lottery Commission see PARA 7.

7 National Lottery etc Act 1993 s 10C(2) (as added: see note 2).

8 National Lottery etc Act 1993 s 10C(3)(a) (as added and prospectively amended: see note 2).

9 National Lottery etc Act 1993 s 10C(3)(b) (as added and prospectively amended: see note 2).

10 National Lottery etc Act 1993 s 10C(3)(c) (as added: see note 2).

11 National Lottery etc Act 1993 s 10C(3)(d) (as added: see note 2).

12 Ie for the purposes of the National Lottery etc Act 1993.

13 Ie the licence (1) at the date at which this volume states the law, under the National Lottery etc Act 1993 s 5 or s 6 (as those provisions have effect in relation to the existing licensing system) (see PARAS 691-692); or (2) as from a day to be appointed under the National Lottery Act 2006 s 6(1) (see PARA 687), under the National Lottery etc Act 1993 s 5 (as that provision has effect in relation to the new licensing system to be introduced by the 2006 Act) (see PARA 694): see the National Lottery etc Act 1993 s 10C(4) (as added and prospectively amended: see note 2).

14 See the National Lottery etc Act 1993 s 10C(4) (as added and prospectively amended: see note 2).

15 The reference in the text to financial assistance is a reference to grants, loans and any other form of financial assistance, which may be made or given on terms or conditions (which may include terms and conditions as to repayment with or without interest): National Lottery etc Act 1993 s 10C(6) (as added: see note 2).

16 As to the licensing objectives see PARA 331.

17 National Lottery etc Act 1993 s 10C(5) (as added: see note 2).

18 National Lottery etc Act 1993 s 10C(8) (as added: see note 2).

UPDATE

699 Payment of annual levy to the Gambling Commission

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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E. VARIATION AND ENFORCEMENT OF LICENCE CONDITIONS

700. Variation of conditions in licences.

The National Lottery Commission ('the Commission')¹ may vary any condition in a licence² if the licensee consents³. The Commission may vary any condition in a licence without the licensee's consent if the licensee has been given a reasonable opportunity of making representations to the Commission about the variation⁴. Where the Commission varies a condition in a licence without the licensee's consent, it must serve a notice on the licensee informing the licensee of the variation, and the variation takes effect at the end of such period as may be specified in the notice⁵ (being a period of at least 21 days beginning with the date of the notice)⁶.

1 As to the National Lottery Commission see PARA 7.

2 I.e a licence granted (1) at the date at which this volume states the law, under the National Lottery etc Act 1993 s 5 or s 6 (as those provisions have effect in relation to the existing licensing system) (see PARAS 691-692); or (2) as from a day to be appointed under the National Lottery Act 2006 s 6(1) (see PARA 687), under the National Lottery etc Act 1993 s 5 (as that provision has effect in relation to the new licensing system to be introduced by the 2006 Act) (see PARA 694): see the National Lottery etc Act 1993 s 8(1) (s 8(1), (2), (4), (6) (amended by virtue of the National Lottery Act 1998 Sch 1 para 4; the National Lottery etc Act 1993 s 8(1) prospectively amended, so as to substitute for a reference to licences or a licence under s 5 or s 6 (see head (1) above) a reference to a licence under s 5 (see head (2) above), by the National Lottery Act 2006 Sch 1 paras 1, 7(a), as from a day to be so appointed; at the date at which this volume states the law, no such day had been appointed and that amendment was not in force).

3 National Lottery etc Act 1993 s 8(1) (as amended and prospectively amended: see note 2). The Commission's power to vary a condition in a licence under the National Lottery etc Act 1993 s 8(1), (2) includes power to add a condition to the licence or omit a condition from it, and references in s 8 to the variation of a condition are to be read accordingly: s 8(6) (as amended: see note 2).

4 National Lottery etc Act 1993 s 8(2) (as amended: see note 2). Section 8(2) does not apply where the variation would result in a condition requiring the licensee to transfer any property or rights: s 8(3)(a). Nor does it apply in relation to a condition that the licence provides may only be varied with the consent of the licensee: s 8(3)(b) (prospectively amended by the National Lottery Act 2006 Sch 1 paras 1, 7(b), as from a day to be appointed under s 6(1) (see PARA 687); at the date at which this volume states the law, no such day had been appointed and that amendment was not in force). Until that amendment is brought into force, the National Lottery etc Act 1993 s 8(3)(b) disapplies s 8(2) only in the case of a licence granted under s 5: see s 8(3)(b) (as originally enacted).

5 National Lottery etc Act 1993 s 8(4) (as amended: see note 2).

6 National Lottery etc Act 1993 s 8(5).

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701. Enforcement of conditions in licences.

If, on an application made by the National Lottery Commission¹, the High Court is satisfied:

2476 (1) that there is a reasonable likelihood that a person will contravene² a condition in a licence³;

2477 (2) that a person has contravened such a condition and there is a reasonable likelihood that the contravention will continue or be repeated; or

2478 (3) that a person has contravened such a condition and there are steps that could be taken for remedying the contravention,

the court may grant an injunction restraining the contravention or, as the case may be, may make an order requiring the licensee, and any other person who appears to the court to have been party to the contravention, to take such steps as the court may direct to remedy it⁴.

Where a sum is due to be paid into the National Lottery Distribution Fund⁵ in accordance with a condition included in a licence⁶, the sum is recoverable by the Secretary of State⁷ as a debt due to the Fund, and the licensee's liability to pay it is not affected by his licence ceasing to have effect⁸.

1 As to the National Lottery Commission see PARA 7.

2 'Contravention', in relation to a condition or requirement, includes a failure to comply with that condition or requirement, and 'contravened' is to be read accordingly: National Lottery etc Act 1993 s 20.

3 I.e. a licence granted (1) at the date at which this volume states the law, under the National Lottery etc Act 1993 s 5 or s 6 (as those provisions have effect in relation to the existing licensing system) (see PARAS 691-692); or (2) as from a day to be appointed under the National Lottery Act 2006 s 6(1) (see PARA 687), under the National Lottery etc Act 1993 s 5 (as that provision has effect in relation to the new licensing system to be introduced by the 2006 Act) (see PARA 694): see the National Lottery etc Act 1993 s 9(1) (s 9(1) amended by virtue of the National Lottery Act 1998 Sch 1 para 4; the National Lottery etc Act 1993 s 9(1) prospectively amended, so as to substitute for a reference to a licence under s 5 or s 6 (see head (1) above) a reference to a licence under s 5 (see head (2) above), by the National Lottery Act 2006 Sch 1 paras 1, 8(a), as from a day to be so appointed; at the date at which this volume states the law, no such day had been appointed and that amendment was not in force).

4 National Lottery etc Act 1993 s 9(1), (2) (as amended and prospectively amended: see note 3).

5 As to the National Lottery Distribution Fund see PARA 713.

6 I.e. by virtue of the National Lottery etc Act 1993 s 5(6) (as that provision has effect in relation to the existing licensing system) (see PARA 691) or, as from a day to be appointed under the National Lottery Act 2006 s 6(1) (see PARA 687), by virtue of the National Lottery etc Act 1993 s 5(2)(c) (as that provision has effect in relation to the new licensing system to be introduced by the 2006 Act) (see PARA 694): see the National Lottery etc Act 1993 s 9(3) (substituted by the Horserace Betting and Olympic Lottery Act 2004 s 34(1), (5); prospectively amended by the National Lottery Act 2006 Sch 1 paras 1, 8(b), as from a day to be so appointed; at the date at which this volume states the law, no such day had been appointed and that amendment was not in force).

7 As to the Secretary of State see PARA 2.

8 National Lottery etc Act 1993 s 9(3) (as substituted and prospectively amended: see note 6).

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702. Financial penalties for breach of conditions in licences.

If the National Lottery Commission ('the Commission')¹ is satisfied that a person has contravened² a condition in a licence³, it may impose a financial penalty on that person in respect of the contravention⁴. The matters to which the Commission may have regard in imposing a financial penalty include the desirability of both deterring persons from contravening conditions in licences, and recovering any diminution in the sums paid or payable in accordance with a condition in a licence⁵ which is attributable to the contravention⁶.

If the Commission proposes to impose a financial penalty on a person, it must serve on that person a notice⁷:

- 2479 (1) stating that the person has contravened conditions in the licence⁸;
 - 2480 (2) identifying the contraventions in question⁹;
 - 2481 (3) stating that the Commission proposes to impose a financial penalty¹⁰;
 - 2482 (4) specifying the amount of the financial penalty¹¹;
 - 2483 (5) stating the Commission's reasons for the imposition of a financial penalty, and for the amount of the financial penalty¹²;
 - 2484 (6) stating the person to whom the financial penalty is to be paid and the manner in which, and place at which, payment may be made¹³; and
 - 2485 (7) stating that:
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- 287. (a) if, within the period of 21 days beginning with the date of the notice, the Commission receives neither written representations, nor written notification of the person's intention to make oral representations, the financial penalty becomes payable at the end of that period¹⁴; and
 - 288. (b) a person on whom a financial penalty is imposed is required to pay the penalty within the period of 14 days beginning with the date on which the financial penalty becomes payable¹⁵.
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Such a notice must state that the person may, within the period of 21 days beginning with the date of the notice, either make written representations about the matter to the Commission, or notify the Commission in writing of the person's intention to make oral representations, and that the right of appeal¹⁶ is dependent on the person having made such written or oral representations¹⁷. The Secretary of State may make regulations as to the procedure to be followed where a person's intention to make oral representations is notified to the Commission as mentioned above¹⁸. The regulations may in particular make provision for the financial penalty to become payable if the person fails to comply with any requirements imposed by or under the regulations¹⁹, and as to the hearing by the Commission of oral representations²⁰.

If any written or oral representations against the imposition of the financial penalty are made, the Commission must after taking the representations into account decide whether or not to impose a financial penalty, and serve a further notice on the person informing the person of the decision²¹. Where the decision is to impose a financial penalty, the further notice must:

- 2486 (i) identify the contraventions in question²²;
- 2487 (ii) specify the amount of the financial penalty imposed²³;
- 2488 (iii) state the Commission's reasons for the imposition of a financial penalty, and for the amount of the financial penalty²⁴;
- 2489 (iv) state the person to whom the financial penalty is to be paid and the manner in which, and place at which, payment may be made²⁵; and
- 2490 (v) state that:
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289. (A) a financial penalty imposed becomes payable on the date of the further notice²⁶; and
290. (B) a person on whom a financial penalty is imposed is required to pay the penalty within the period of 14 days beginning with the date on which the financial penalty becomes payable²⁷.
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1 As to the National Lottery Commission see PARA 7.

2 As to the meaning of 'contravention' see PARA 701 note 2.

3 Ie a licence (1) at the date at which this volume states the law, under the National Lottery etc Act 1993 s 5 or s 6 (as those provisions have effect in relation to the existing licensing system) (see PARAS 691-692); or (2) as from a day to be appointed under the National Lottery Act 2006 s 6(1) (see PARA 687), under the National Lottery etc Act 1993 s 5 (as that provision has effect in relation to the new licensing system to be introduced by the 2006 Act) (see PARA 694): see the National Lottery etc Act 1993 s 10A(1) (s 10A added by the National Lottery Act 1998 s 2(1), (5) and amended by virtue of Sch 1 para 4; the National Lottery etc Act 1993 s 10A(1), (2)(a) prospectively amended, so as to substitute for a reference to a licence or licences under s 5 or s 6 (see head (1) above) a reference to a licence under s 5 (see head (2) above), by the National Lottery Act 2006 Sch 1 paras 1, 10(a), as from a day to be so appointed; at the date at which this volume states the law, no such day had been appointed and that amendment was not in force).

4 National Lottery etc Act 1993 s 10A(1) (as added, amended and prospectively amended: see note 3). A penalty under s 10A may be payable partly to the National Lottery Distribution Fund (as to which see PARA 713) and partly to the Olympic Lottery Distribution Fund (as to which see PARA 717): s 10A(15) (added by the Horserace Betting and Olympic Lottery Act 2004 s 34(1), (6)).

5 Ie any sums paid under the National Lottery etc Act 1993 s 5(6) (as that provision has effect in relation to the existing licensing system) (see PARA 691) or, as from a day to be appointed under the National Lottery Act 2006 s 6(1) (see PARA 687), any sums payable under the National Lottery etc Act 1993 s 5(2)(c) (as that provision has effect in relation to the new licensing system to be introduced by the 2006 Act) (see PARA 694): see the National Lottery etc Act 1993 s 10A(2)(b) (as added (see note 3); prospectively amended by the National Lottery Act 2006 Sch 1 paras 1, 10(b), as from a day to be so appointed; at the date at which this volume states the law, no such day had been appointed and that amendment was not in force).

6 National Lottery etc Act 1993 s 10A(2) (as added, amended and prospectively amended: see notes 3, 5).

7 National Lottery etc Act 1993 s 10A(3) (as added and amended: see note 3).

8 National Lottery etc Act 1993 s 10A(3)(a) (as added: see note 3).

9 National Lottery etc Act 1993 s 10A(3)(b) (as added: see note 3).

10 National Lottery etc Act 1993 s 10A(3)(c) (as added and amended: see note 3).

11 National Lottery etc Act 1993 s 10A(3)(d) (as added: see note 3).

12 National Lottery etc Act 1993 s 10A(3)(e) (as added and amended: see note 3).

13 National Lottery etc Act 1993 s 10A(3)(f) (as added: see note 3).

14 National Lottery etc Act 1993 s 10A(3)(g), (5) (as added and amended: see note 3).

15 National Lottery etc Act 1993 s 10A(3)(g), (12) (as added and amended: see note 3).

16 Ie the right of appeal conferred by National Lottery etc Act 1993 s 10B: see PARA 703.

17 National Lottery etc Act 1993 s 10A(4) (as added and amended: see note 3).

18 National Lottery etc Act 1993 s 10A(6) (as added and amended: see note 3). As to the Secretary of State see PARA 2. Where the licensee has notified the Commission in consequence of s 10A(4)(b) of its intention to make oral representations, the Commission must send a written notice to the licensee of the date, time and place fixed for the holding of the hearing; and that notice must be sent at least seven days before the date so fixed: see the National Lottery (Imposition of Penalties and Revocation of Licences) Procedure Regulations 1999, SI 1999/137, regs 4, 5. Any notice or other document required or authorised to be sent to the licensee under those 1999 Regulations is duly sent if (1) it is sent by post in a registered letter or by recorded delivery to, or delivered to, or left for, the secretary of the licensee at its registered or principal office in the United Kingdom or at the address stated in the notice of intention to make oral representations; or (2) it is transmitted by electronic means to an address stated as being for the purpose of receiving notices or other documents in the notice of intention to make oral representations and is in legible form capable of being used for subsequent reference: reg 19(1). If a notice of intention to make oral representations is sent by registered post or recorded delivery, it is to be treated as if it had been received on the date on which it is received for dispatch by the postal operator (within the meaning of the Postal Services Act 2000) concerned: National Lottery (Imposition of Penalties and Revocation of Licences) Procedure Regulations 1999, SI 1999/137, reg 19(2) (amended by SI 2001/1149). If a notice of intention to make oral representations is transmitted by electronic means, it is to be treated as received on the date on which it was transmitted: National Lottery (Imposition of Penalties and Revocation of Licences) Procedure Regulations 1999, SI 1999/137, reg 19(3). As to the meaning of 'United Kingdom' see PARA 16 note 8.

The Commission may at any time direct the licensee to furnish any particulars which appear to it to be requisite in connection with the hearing within such time as the Commission may allow, being not less than seven days: see reg 6.

19 National Lottery etc Act 1993 s 10A(7)(a) (as added: see note 3). If the licensee has notified the Commission in writing of its intention to make oral representations and having been duly notified of the hearing pursuant to the National Lottery (Imposition of Penalties and Revocation of Licences) Procedure Regulations 1999, SI 1999/137, reg 5 (see note 18) does not comply with the requirement in reg 8 (see note 20) to appear at the hearing, the financial penalty specified in the notice served by the Commission pursuant to the National Lottery etc Act 1993 s 10A(3) becomes payable on the seventh day after the day fixed for the hearing specified in the notice referred to in the National Lottery (Imposition of Penalties and Revocation of Licences) Procedure Regulations 1999, SI 1999/137, reg 5: see reg 10.

20 National Lottery etc Act 1993 s 10A(7)(b) (as added and amended: see note 3). Subject to the following provisions, a hearing must be held in public: National Lottery (Imposition of Penalties and Revocation of Licences) Procedure Regulations 1999, SI 1999/137, reg 7(1). The Commission may, however, direct that the whole or any part of a hearing be held in private if it is satisfied that by reason of (1) the likelihood of disclosure of intimate personal or financial circumstances; (2) the likelihood of disclosure of commercially sensitive information or information obtained in confidence; or (3) exceptional circumstances not falling within head (1) or head (2) above, it is just and reasonable for the Commission to do so: see reg 7(2). Where the hearing is in private the Commission may admit such persons as it considers appropriate: see reg 7(3). Notwithstanding the provisions of reg 7(2), (3), a member of the Administrative Justice and Tribunals Council is entitled to be present in his capacity as such even though the hearing or part of the hearing is not in public: reg 7(4) (amended by virtue of the Tribunals, Courts and Enforcement Act 2007 ss 44, 45). As to the Administrative Justice and Tribunals Council (which replaces the Council on Tribunals) see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 56 et seq.

The licensee must appear at the hearing and may be represented by any person whom he may appoint for the purpose: reg 8. Except as otherwise provided in the 1999 Regulations, the Commission must determine the procedure at the hearing: see reg 9(1). The licensee is entitled to give evidence, call witnesses and address the Commission both on the evidence and generally on the proposal to impose a penalty: see reg 9(2). The Commission may from time to time adjourn the hearing: see reg 9(3).

21 National Lottery etc Act 1993 s 10A(8), (9) (as added and amended: see note 3).

22 National Lottery etc Act 1993 s 10A(10)(a) (as added: see note 3).

23 National Lottery etc Act 1993 s 10A(10)(b) (as added: see note 3).

24 National Lottery etc Act 1993 s 10A(10)(c) (as added and amended: see note 3).

25 National Lottery etc Act 1993 s 10A(10)(d) (as added: see note 3).

26 National Lottery etc Act 1993 s 10A(10)(e), (11) (as added: see note 3).

27 National Lottery etc Act 1993 s 10A(10)(e), (12) (as added: see note 3). If the whole or any part of a financial penalty is not paid within the 14-day period mentioned in head (v)(B) in the text, then as from the end of that period the unpaid balance from time to time carries interest at the rate for the time being specified in the Judgments Act 1838 s 17 (see **CIVIL PROCEDURE** vol 12 (2009) PARA 1149): National Lottery etc Act 1993 s 10A(13) (as so added). Where under s 10A one person ('the debtor') becomes liable to pay a penalty to another person ('the creditor'), the penalty and any interest accrued under s 10A(13) is recoverable by the Secretary of State from the debtor as a debt due to the creditor, and the debtor's liability to pay is not affected by his licence ceasing to have effect: s 10A(14) (substituted by the Horserace Betting and Olympic Lottery Act 2004 s 34(1), (6)).

UPDATE

702 Financial penalties for breach of conditions in licences

NOTE 20--SI 1999/137 reg 7(4) revoked: SI 2008/2683.

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703. Appeals against financial penalties.

Where the National Lottery Commission ('the Commission')¹ decides² to impose a financial penalty on a person, the person may appeal to the High Court against the decision on the following grounds³. To the extent that such an appeal is against a finding by the Commission that a person contravened⁴ a condition of a licence, the grounds for the appeal are that:

- 2491 (1) the Commission made an error as to the facts;
- 2492 (2) there was a material procedural error; or
- 2493 (3) the Commission made some other error of law⁵.

To the extent that such an appeal is against the amount of a financial penalty, the grounds for the appeal are that:

- 2494 (a) the amount of the penalty is unreasonable;
- 2495 (b) there was a material procedural error; or
- 2496 (c) the decision was based on a manifest material misapprehension as to the facts⁶.

Where on an appeal a court reduces the amount of a financial penalty, the powers of the court include power to make such orders as to interest on the penalty as the court considers just and equitable in all the circumstances of the case⁷. This includes power to make orders as to the rates of interest which are to apply, and the date from which interest is to run⁸.

1 As to the National Lottery Commission see PARA 7.

2 Ie under the National Lottery etc Act 1993 s 10A(9): see PARA 702.

3 National Lottery etc Act 1993 s 10B(1), (6) (s 10B added by, and s 10B(1), (2) amended by virtue of, the National Lottery Act 1998 ss 1(5), 3, Sch 1 para 4).

4 As to the meaning of 'contravention' see PARA 701 note 2.

5 National Lottery etc Act 1993 s 10B(2) (as added and amended: see note 3).

6 National Lottery etc Act 1993 s 10B(3) (as added: see note 3).

7 National Lottery etc Act 1993 s 10B(4) (as added: see note 3).

8 National Lottery etc Act 1993 s 10B(5) (as added: see note 3).

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F. REVOCATION AND SUSPENSION OF LICENCES

704. Commission's duties and power to revoke licences.

The National Lottery Commission ('the Commission')¹ must revoke a licence² if it is satisfied that the licensee no longer is, or never was, a fit and proper, or suitable, person³ to carry out the licensed activities⁴. As from a day to be appointed⁵, the Commission must also revoke a licence if the licensee fails to pay the annual fee⁶; but the Commission may disapply this provision if it thinks that a failure to pay is attributable to administrative error⁷.

The Commission may revoke a licence⁸ if it appears to it that any of the discretionary grounds for revocation⁹ applies, or if the licensee consents¹⁰.

1 As to the National Lottery Commission see PARA 7.

2 I.e a licence granted (1) at the date at which this volume states the law, under the National Lottery etc Act 1993 s 5 or s 6 (as those provisions have effect in relation to the existing licensing system) (see PARAS 691-692); or (2) as from a day to be appointed under the National Lottery Act 2006 s 6(1) (see PARA 687), under the National Lottery etc Act 1993 s 5 (as that provision has effect in relation to the new licensing system to be introduced by the 2006 Act) (see PARA 694): see the National Lottery etc Act 1993 s 10(1), (2) (amended by the National Lottery Act 2006 s 3(e); and by virtue of the National Lottery Act 1998 Sch 1 para 4; the National Lottery etc Act 1993 s 10(1) prospectively amended, so as to substitute for a reference to a licence to run the National Lottery under s 5 (as that provision has effect in relation to the existing licensing system) a reference to a licence under s 5 to promote a lottery or lotteries under the new system, by the National Lottery Act 2006 Sch 1 paras 1, 9(a); and the National Lottery etc Act 1993 s 10(2) prospectively repealed by the National Lottery Act 2006 Sch 1 paras 1, 9(b), as from a day to be so appointed; at the date at which this volume states the law, no such day had been appointed and that amendment and repeal were not in force). As to the meaning of 'the National Lottery' see PARA 687; as to the meaning of 'promote' see PARA 687 note 4; and as to the meaning of 'lottery' see PARA 687 note 1.

3 At the date at which this volume states the law, the statutory wording is, in relation to a licence under the National Lottery etc Act 1993 s 5, 'a fit and proper person to run the National Lottery' and, in relation to a licence under s 6, 'a fit and proper person to promote lotteries under the licence' (see s 10(1), (2) amended as set out in note 2, but without the prospective amendments and repeal there noted); as from a day to be appointed under the National Lottery Act 2006 s 6(1) (see PARA 687), the statutory wording will be 'a suitable person to promote the lottery or lotteries to which the licence relates' (see s 10(1) (as amended and prospectively amended: see note 2)).

4 See the National Lottery etc Act 1993 s 10(1), (2) (as amended: see note 2). Section 10(2), which relates to a licence under s 6, as that provision has effect in relation to the existing licensing system (see PARA 692), is prospectively repealed: see note 2. As to the consideration of criminal convictions by the Commission see PARA 691 note 6.

5 I.e under the National Lottery Act 2006 s 22. At the date at which this volume states the law, no such day had been appointed.

6 I.e under the National Lottery etc Act 1993 s 7A (not yet in force): see PARA 696.

7 National Lottery etc Act 1993 s 10(3A) (prospectively added by the National Lottery Act 2006 s 5(3)(a), and amended by Sch 1 para 1, 9(d), as from a day to be appointed under ss 6(1), 22; at the date at which this volume states the law, no such day had been appointed.

8 I.e a licence granted (1) at the date at which this volume states the law, under the National Lottery etc Act 1993 s 5 or s 6 (as those provisions have effect in relation to the existing licensing system) (see PARAS 691-692);

or (2) as from a day to be appointed under the National Lottery Act 2006 s 6(1) (see PARA 687), under the National Lottery etc Act 1993 s 5 (as that provision has effect in relation to the new licensing system to be introduced by the 2006 Act) (see PARA 694): see the National Lottery etc Act 1993 s 10(3) (amended by virtue of the National Lottery Act 1998 Sch 1 para 4; the National Lottery etc Act 1993 s 10(3) prospectively amended, so as to substitute for a reference to licences or a licence under s 5 or s 6 (see head (1) above) a reference to a licence under s 5 (see head (2) above), by the National Lottery Act 2006 Sch 1 paras 1, 9(c), as from a day to be so appointed; at the date at which this volume states the law, no such day had been appointed and that amendment was not in force).

9 le the grounds set out in the National Lottery etc Act 1993 Sch 3 Pt I: see PARA 705.

10 National Lottery etc Act 1993 s 10(3) (as amended and prospectively amended: see note 8).

UPDATE

704 Commission's duties and power to revoke licences

NOTE 7--Day appointed in relation to National Lottery Act 2006 s 5 is 6 January 2010: SI 2010/2.

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705. Discretionary grounds for revocation of licences.

The following grounds are discretionary grounds for revocation of a licence¹, namely:

- 2497 (1) that a condition in the licence has been contravened²;
- 2498 (2) that any information given by the licensee to the National Lottery Commission ('the Commission')³ in or in connection with the application for the licence, in pursuance of a condition in the licence, or in making representations⁴, was false in a material particular⁵;
- 2499 (3) that:
- 185 291. (a) a proposal for a voluntary arrangement⁶ has been made in relation to the licensee;
- 292. (b) a petition for the winding up of the licensee has been presented to the court;
- 293. (c) a resolution for the voluntary winding up of the licensee has been passed;
- 294. (d) a receiver or manager of the whole or any part of the licensee's property has been appointed; or
- 295. (e) an administration application has been made or a notice of intention to appoint an administrator or a notice of an appointment of an administrator⁷ has been filed⁸.
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At the date at which this volume states the law, the following are also discretionary grounds for revocation of a licence, namely:

- 2500 (i) in the case of a licence granted to run the National Lottery⁹, that:
- 187 296. (A) the licensee is not providing or proposing to provide facilities that are necessary or desirable for running the National Lottery;
- 297. (B) any person who is managing the business or any part of the business of running the National Lottery under the licence is not a fit and proper person to do so;
- 298. (C) any person for whose benefit that business is carried on is not a fit and proper person to benefit from it¹⁰;
- 188 2501 (ii) in the case of a licence granted to promote lotteries¹¹, that:
- 189 299. (A) the licensee is not taking or proposing to take steps that are necessary or desirable for preventing the commission of fraud by participants¹² in any lottery promoted under the licence;
- 300. (B) a person who is managing the business or any part of the business of promoting lotteries under the licence is not a fit and proper person to do so;
- 301. (C) a person for whose benefit that business is carried on is not a fit and proper person to benefit from it¹³.
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As from a day to be appointed¹⁴, however, heads (i) and (ii) above will cease to have effect. Instead, the following will be additional discretionary grounds for revoking a licence, namely that:

- 2502 (aa) the licensee is not providing or proposing to provide facilities that are necessary or desirable in connection with the operation of a lottery;
- 2503 (bb) the licensee is not taking or proposing to take steps that are necessary or desirable for preventing the commission of fraud by participants in a lottery;
- 2504 (cc) a person who is exercising a function in connection with the promotion of a lottery is unsuitable;
- 2505 (dd) a person who has an interest in a lottery is unsuitable¹⁵.

1 As to the licences that may be revoked, and the discretionary power of revocation, see PARA 704.

2 National Lottery etc Act 1993 Sch 3 para 1. As to the meaning of 'contravened' see PARA 701 note 2.

3 As to the National Lottery Commission see PARA 7.

4 Ie under National Lottery etc Act 1993 s 8(2) (see PARA 700) or s 10(4), Sch 3 Pt II (paras 6-11) (see PARAS 706-707).

5 National Lottery etc Act 1993 Sch 3 para 2 (amended by virtue of the National Lottery Act 1998 Sch 1 para 4).

6 Ie under the Insolvency Act 1986 Pt I (ss 1-7B) or the corresponding Northern Ireland legislation. As to company voluntary arrangements see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 71 et seq.

7 Ie under the Insolvency Act 1986 Sch B1 para 14 or Sch B1 para 22: see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 228 et seq.

8 National Lottery etc Act 1993 Sch 3 para 3 (amended by SI 2003/2096). As to voluntary winding-up orders see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 939 et seq.

9 Ie a licence under National Lottery etc Act 1993 s 5, as that provision has effect in relation to the existing licensing system: see PARA 691. As to the National Lottery see PARA 687.

10 National Lottery etc Act 1993 Sch 3 para 4 (as originally enacted).

11 Ie a licence under National Lottery etc Act 1993 s 6, as that provision has effect in relation to the existing licensing system: see PARA 692. As to the meaning of 'promote' see PARA 687 note 4; and as to the meaning of 'lottery' see PARA 687 note 1.

12 As to the meaning of 'participant' see PARA 688 note 8.

13 National Lottery etc Act 1993 Sch 3 para 5.

14 Ie under the National Lottery Act 2006 s 6(1): see PARA 687. At the date at which this volume states the law, no such day had been appointed.

15 See the National Lottery etc Act 1993 Sch 3 para 4 (prospectively substituted by the National Lottery Act 2006 Sch 1 paras 1, 14, as from a day to be appointed (see note 14); at the date at which this volume states the law, no such day had been appointed and that substitution was not in force.

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706. Procedure for revocation of licences.

The following provisions have effect in relation to the revocation of a licence¹, other than a revocation with the licensee's consent or, as from a day to be appointed², a revocation³ because of failure to pay the annual fee⁴.

Where the National Lottery Commission ('the Commission')⁵ proposes to revoke a licence⁶, it must serve a notice on the licensee:

- 2506 (1) stating that it proposes to revoke the licence;
- 2507 (2) stating the ground or grounds for revocation;
- 2508 (3) stating that the licensee may within the period of 21 days beginning with the date of the notice either make written representations about the matter to the Commission or notify the Commission in writing of the licensee's intention to make oral representations;
- 2509 (4) stating that the right of appeal⁷ is dependent on the licensee having made such written or oral representations; and
- 2510 (5) explaining that if, within the period mentioned in head (3) above, the Commission receives neither written representations nor written notification of the licensee's intention to make oral representations, the revocation will take effect at the end of that period⁸.

The Commission may suspend a licence as from the date of any notice served in respect of it under heads (1) to (5) above if the Commission reasonably believes:

- 2511 (a) that the ground or any of the grounds specified in the notice involves fraud by the licensee⁹; or
- 2512 (b) at the date at which this volume states the law, that the ground or one of the grounds specified in the notice is the ground¹⁰ that, in relation to a licence to promote lotteries under the existing system¹¹, the licensee is not taking or proposing to take steps that are necessary or desirable for preventing the commission of fraud by participants in any lottery promoted under the licence¹².

Where a licence is suspended the suspension lasts until the revocation takes effect or the Commission decides not to revoke the licence or an appeal against the revocation is allowed, and the notice must inform the licensee accordingly¹³.

The Secretary of State¹⁴ may make regulations as to the procedure to be followed where a licensee's intention to make oral representations is notified to the Commission as mentioned in head (3) above¹⁵. The regulations may in particular make provision for the revocation of the licence to take effect if the licensee fails to comply with any requirements imposed by or under the regulations¹⁶, and as to the hearing by the Commission of oral representations¹⁷.

If any written representations against the revocation of a licence are made as mentioned in head (3) above or any oral representations against the revocation of a licence are made in accordance with regulations, the Commission, after taking the representations into account, must decide whether or not to revoke the licence¹⁸. The Commission must serve a further

notice on the licensee informing the licensee of its decision and (if the case so requires) explaining that where the decision is to revoke the licence, the revocation will not take effect:

- 2513 (i) until the end of such period as may be specified in the further notice (being a period of at least 28 days beginning with the date of the notice)¹⁹; or
- 2514 (ii) if the licensee appeals within that period against the revocation and the court makes an order preventing the revocation from taking effect²⁰, until such time as is specified in the order,

whichever is the later²¹.

1 I.e. revocation under the National Lottery etc Act 1993 s 10: see PARA 704.

2 I.e. under the National Lottery Act 2006 s 22. At the date at which this volume states the law, no such day had been appointed.

3 I.e. a revocation under the National Lottery etc Act 1993 s 10(3A) (not yet in force): see PARA 704.

4 National Lottery etc Act 1993 s 10(4) (prospectively amended by the National Lottery Act 2006 s 5(3)(b), as from a day to be appointed (see note 2); at the date at which this volume states the law, no such day had been appointed and that amendment, which adds the reference in the text to revocation under the National Lottery etc Act 1993 s 10(3A), was not in force).

5 As to the National Lottery Commission see PARA 7.

6 As to the licences that may be revoked see PARA 704; and as to the grounds for revocations see PARAS 704-705.

7 I.e. the right of appeal conferred by National Lottery etc Act 1993 Sch 3 para 11: see PARA 707.

8 National Lottery etc Act 1993 Sch 3 para 6(1), (2) (amended by the National Lottery Act 1998 ss 4(2), 26, Sch 1 para 4, Sch 5 Pt II).

9 National Lottery etc Act 1993 Sch 3 para 7(1)(a) (Sch 3 paras 7-9 amended by virtue of the National Lottery Act 1998 Sch 1 para 4).

10 I.e. the ground set out in the National Lottery etc Act 1993 Sch 3 para 5(a): see PARA 705 at head (ii)(A).

11 I.e. a licence under the National Lottery etc Act 1993 s 6, as that provision has effect in relation to the existing licensing system: see PARA 692. As to the meaning of 'promote' see PARA 687 note 4; and as to the meaning of 'lottery' see PARA 687 note 1.

12 See the National Lottery etc Act 1993 Sch 3 para 7(1)(b) (as amended: see note 9). As to the meaning of 'participant' see PARA 688 note 8.

13 National Lottery etc Act 1993 Sch 3 para 7(2) (as amended: see note 9).

14 As to the Secretary of State see PARA 2.

15 National Lottery etc Act 1993 Sch 3 para 8(1) (as amended: see note 9). In a case where the licensee has so notified the Commission of his intention to make oral representations, the Commission must send a written notice to the licensee of the date, time and place fixed for the holding of the hearing; and that notice must be sent at least seven days before the date so fixed: see the National Lottery (Imposition of Penalties and Revocation of Licences) Procedure Regulations 1999, SI 1999/137, regs 11, 12. As to the method of giving notice see reg 19, cited in PARA 702 note 18. The Commission may at any time direct the licensee to furnish any particulars which appear to it to be requisite in connection with the hearing within such time as the Commission may allow, being not less than seven days: see reg 13.

16 National Lottery etc Act 1993 Sch 3 para 8(2)(a). If the licensee has not made any written representations pursuant to head (3) in the text, and having been duly notified of the hearing pursuant to the National Lottery (Imposition of Penalties and Revocation of Licences) Procedure Regulations 1999, SI 1999/137, reg 12 (see note 15) does not comply with the requirement in reg 15 to appear at the hearing (see note 17), the revocation of his licence takes effect on the seventh day after the day fixed for the hearing specified in the notice referred to in reg 12: reg 17.

17 National Lottery etc Act 1993 Sch 3 para 8(2)(b) (as amended: see note 9). Subject to the following provisions, a hearing must be held in public: National Lottery (Imposition of Penalties and Revocation of Licences) Procedure Regulations 1999, SI 1999/137, reg 14(1). The Commission may direct that the whole or any part of a hearing be held in private if the Commission is satisfied that by reason of (1) the likelihood of disclosure of intimate personal or financial circumstances; (2) the likelihood of disclosure of commercially sensitive information or information obtained in confidence; or (3) exceptional circumstances not falling within head (1) or head (2) above, it is just and reasonable for it to do so: see reg 14(2). Where the hearing is in private the Commission may admit such persons as it considers appropriate: see reg 14(3). Notwithstanding the provisions of reg 14(2), (3), a member of the Council on Tribunals is entitled to be present in his capacity as such even though the hearing or part of the hearing is not in public: reg 14(4).

The licensee must appear at the hearing and may be represented by any person whom he may appoint for the purpose: reg 15. Except as otherwise provided in the 1999 Regulations, the Commission must determine the procedure at the hearing: see reg 16(1). The licensee is entitled to give evidence, call witnesses and address the Commission both on the evidence and generally on the proposal to revoke his licence: see reg 16(2). The Commission may from time to time adjourn the hearing: see reg 16(3).

18 National Lottery etc Act 1993 Sch 3 para 9(1)(a) (as amended: see note 9).

19 See the National Lottery etc Act 1993 Sch 3 para 9(3).

20 See under the National Lottery etc Act 1993 Sch 3 para 11(2): see PARA 707.

21 See the National Lottery etc Act 1993 Sch 3 Pt II para 9(1)(b), (2) (Sch 3 para 9(2) amended by the National Lottery Act 1998 s 4(1), (4)). Except where the National Lottery (Imposition of Penalties and Revocation of Licences) Procedure Regulations 1999, SI 1999/137, reg 17 (see note 16) applies, the Commission must send to the licensee a written statement of reasons (in summary form) for its decision whether or not to revoke the licence: see reg 18.

UPDATE

706 Procedure for revocation of licences

NOTE 4--Day appointed is 6 January 2010: SI 2010/2.

NOTE 17--SI 1999/137 reg 14(4) revoked: SI 2008/2683.

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707. Appeals against revocation of licences.

Where the National Lottery Commission ('the Commission')¹ decides to revoke a licence under the statutory procedure², the licensee may appeal to the High Court against the decision on the grounds:

- 2515 (1) that the Commission made an error as to the facts;
- 2516 (2) that there was a material procedural error; or
- 2517 (3) that the Commission made some other error of law³.

Where a licensee appeals, the powers of the court pending the withdrawal or final disposal of the appeal include power, on the application of the licensee or the Commission, to make an order, if the court considers it just and equitable to do so in all the circumstances of the case, preventing the revocation taking effect until such time as may be specified in the order⁴.

1 As to the National Lottery Commission see PARA 7.

2 See under the National Lottery etc Act 1993 Sch 3 para 9: see PARA 706. Note that, when s 10(3A) (see PARA 704) comes into force, there will be no right of appeal against revocation on that ground as the procedure under Sch 3 para 9 will not apply (see PARA 706).

3 National Lottery etc Act 1993 Sch 3 para 11(1), (3) (Sch 3 para 11 added by the National Lottery Act 1998 s 4(1), (6), and amended by virtue of Sch 1 para 4).

4 National Lottery etc Act 1993 Sch 3 para 11(2) (as added and amended: see note 3).

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(iv) Control by the Secretary of State

708. Directions to the National Lottery Commission.

The National Lottery Commission¹, in exercising its statutory functions², must comply with any directions that it may be given by the Secretary of State³. Such directions may deal in particular: (1) with the matters that the Commission should take into account in deciding whether or not to grant licences; and (2) with the conditions that licences should contain⁴.

¹ As to the National Lottery Commission see PARA 7.

² I.e. its functions under the National Lottery etc Act 1993 ss 5-10A: see PARAS 691-702. The reference in the text to the functions of the Commission under ss 5-10A is to be treated as including a reference to the functions of the Commission under or in accordance with the Horserace Betting and Olympic Lottery Act 2004 Pt 3 (ss 21-37) (see PARAS 688 note 4, 698-699, 717-720, 735-738): s 34(7)(a) (numbered as such and amended by SI 2007/2129).

³ National Lottery etc Act 1993 s 11(1) (s 11 amended by virtue of the National Lottery Act 1998 Sch 1 para 4). As to the Secretary of State see PARA 2. As to the making and revocation of directions under the National Lottery etc Act 1993 see PARA 7 note 27.

The reference in the text to the Secretary of State, in relation to the functions of the Commission under or in accordance with the Horserace Betting and Olympic Lottery Act 2004 Pt 3, is to be treated as a reference to the Secretary of State or the Paymaster General: s 34(7)(b) (added by SI 2007/2129). See also the Transfer of Functions (Olympics and Paralympics) Order 2007, SI 2007/2129, art 3(2)(a)(ii), which provides for the concurrent exercise of their powers in connection with the 2004 Act.

⁴ National Lottery etc Act 1993 s 11(2) (as amended: see note 3).

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709. Power to make regulations as to the promotion of lotteries.

The Secretary of State¹ may by regulations make such provision in relation to the promotion² of lotteries that form part of the National Lottery³ as he considers necessary or expedient⁴. Such regulations may in particular impose requirements or restrictions as to:

- 2518 (1) the minimum age of persons to whom or by whom tickets⁵ or chances may be sold⁶;
- 2519 (2) the places, circumstances or manner in which tickets or chances may be sold or persons may be invited to buy them⁷;
- 2520 (3) the information that must appear in an advertisement for a lottery⁸; and
- 2521 (4) the places, circumstances or manner in which signs relating to a lottery may be displayed⁹.

Such regulations may make different provision for different areas¹⁰.

1 As to the Secretary of State see PARA 2.

2 As to the meaning of 'promotion' see PARA 687 note 4.

3 As to references to lotteries forming part of the National Lottery see PARA 687 notes 2, 13. As to the National Lottery see PARA 687.

4 National Lottery etc Act 1993 s 12(1). As to the regulations made under s 12(1) see the National Lottery Regulations 1994, SI 1994/189; and PARA 710.

5 'Tickets' includes any document providing evidence of a person's claim to participate in the chances of a lottery: National Lottery etc Act 1993 s 12(3).

6 National Lottery etc Act 1993 s 12(2)(a); and see PARA 710.

7 National Lottery etc Act 1993 s 12(2)(b); and see PARA 710.

8 National Lottery etc Act 1993 s 12(2)(c).

9 National Lottery etc Act 1993 s 12(2)(d).

10 National Lottery etc Act 1993 s 12(4).

UPDATE

709-711 Power to make regulations as to the promotion of lotteries ... Contravention of regulations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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710. Restrictions on sales of National Lottery tickets.

Regulations made by the Secretary of State¹ impose the following restrictions and prohibitions:

- 2522 (1) no National Lottery ticket² must be sold³ by or to a person who has not attained the age of 16 years⁴;
- 2523 (2) no National Lottery ticket must be sold to a person, nor must a person be invited to purchase a National Lottery ticket, in any street⁵; but this prohibition does not have effect in relation to the sale of or invitation to purchase a National Lottery ticket by a person present in a kiosk or shop premises having no space for the accommodation of customers⁶;
- 2524 (3) no National Lottery ticket must be sold to a person, nor must a person be invited to purchase a National Lottery ticket:
- 191 302. (a) in or on any premises in respect of which a premises licence under Part 8 of the Gambling Act 2005⁷ for the time being has effect⁸;
- 303. (b) in any premises in respect of which a family entertainment centre gaming machine permit⁹ for the time being has effect¹⁰;
- 192 2525 but these prohibitions only apply to a track¹¹ in respect of which a betting premises licence¹² has effect, in the case of a horse racecourse¹³, on any day on which horse racing takes place, or is expected to take place, on the premises, or in the case of any other track, on any day on which the premises may be used for gambling¹⁴ in reliance on the licence¹⁵;
- 2526 (4) no National Lottery ticket must be sold by means of a vending machine unless such machine is, at all times when tickets can be sold by means of it, attended¹⁶ by a person authorised by the licence holder¹⁷;
- 2527 (5) no National Lottery ticket must be sold, nor must a person be invited to purchase a National Lottery ticket, by a person when visiting any other person at his home in the discharge of any official, professional or commercial function, including the function of selling National Lottery tickets¹⁸.

Contravention of these provisions is an offence¹⁹.

¹ ie under the National Lottery etc Act 1993 s 12: see PARA 709. As to the Secretary of State see PARA 2.

² 'National Lottery ticket' means a ticket or chance in a lottery that forms part of the National Lottery: National Lottery Regulations 1994, SI 1994/189, reg 2. As to the National Lottery see PARA 687.

³ For these purposes, 'sold' has its ordinary popular meaning of agreeing to and carrying out a transaction with a vendor; therefore if a person under 16 buying on behalf of an absent adult hands over money in exchange for the ticket, the ticket is 'sold' to that person: see *Camelot Group plc v Beech* (6 November 1996, unreported) per Blackburn J.

⁴ National Lottery Regulations 1994, SI 1994/189, reg 3. The offence of selling a National Lottery ticket to a person who has not attained the age of 16 is one of strict liability: *Harrow London Borough Council v Shah* [1999] 3 All ER 302, [2000] 1 WLR 83.

5 National Lottery Regulations 1994, SI 1994/189, reg 4(1). For these purposes, 'street' includes any bridge, road, lane, footway, subway, court, alley or passage, whether a thoroughfare or not, which is for the time being open to the public without payment: reg 4(3).

6 National Lottery Regulations 1994, SI 1994/189, reg 4(2).

7 ie a premises licence under the Gambling Act 2005 Pt 8 (ss 150-215, Sch 9): see PARA 460 et seq.

8 National Lottery Regulations 1994, SI 1994/189, reg 5(1)(a) (reg 5 substituted by SI 2007/2307). For these purposes, any reference to premises in respect of which a premises licence issued under the Gambling Act 2005 Pt 8 for the time being has effect, includes a reference to premises in respect of which a relevant gambling authorisation for the time being has effect; and 'relevant gambling authorisation' in relation to premises means (1) a betting office licence under the Betting, Gaming and Lotteries Act 1963 (repealed); (2) a track betting licence under that Act; (3) a certificate of approval under s 13 (repealed); (4) a licence under the Gaming Act 1968 (repealed); or (5) a permit under the Gaming Act 1968 s 34 (repealed), which by virtue of the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006, SI 2006/3272, Sch 4 para 62 has effect to authorise the use of the premises for gambling as if it were a kind of premises licence issued under the Gambling Act 2005 Pt 8: National Lottery Regulations 1994, SI 1994/189, reg 5(3)(e), (4) (as so substituted).

9 For these purposes, 'family entertainment centre gaming machine permit' means a family entertainment centre gaming machine permit issued under the Gambling Act 2005 s 247 (see PARA 562): National Lottery Regulations 1994, SI 1994/189, reg 5(3)(c) (as substituted: see note 8).

10 National Lottery Regulations 1994, SI 1994/189, reg 5(1)(b) (as substituted: see note 8).

11 As to the meaning of 'track' see PARA 372 note 8 (definition applied by the National Lottery Regulations 1994, SI 1994/189, reg 5(3)(d) (as substituted: see note 8)).

12 As to the meaning of 'betting premises licence' for the purposes of the Gambling Act 2005 see PARA 460 at head (5).

13 As to the meaning of 'horse racecourse' see PARA 372 note 8 (definition applied by the National Lottery Regulations 1994, SI 1994/189, reg 5(3)(d) (as substituted: see note 8)).

14 As to the meaning of 'gambling' for the purposes of the Gambling Act 2005 see PARA 308.

15 National Lottery Regulations 1994, SI 1994/189, reg 5(2) (as substituted: see note 8).

16 A vending machine is not to be treated as attended for these purposes unless the person attending the vending machine is in a position where he can control the operation of the machine and in particular take action to prevent the purchase of tickets by any person whom he believes has not attained the age of 16 years: National Lottery Regulations 1994, SI 1994/189, reg 6(2).

17 See the National Lottery Regulations 1994, SI 1994/189, reg 6(1). The reference in the text to the licence holder is a reference to either (1) the holder of the licence under the National Lottery etc Act 1993 s 5 (either under the existing or the prospective new licensing system: see PARAS 691, 694); or (2) at the date at which this volume states the law, the holder of a licence under s 6 which authorises the promotion of the lottery, the tickets or chances of which are being sold by means of the vending machine (ie a licence under s 6 as that provision has effect in relation to the existing licensing system: see PARA 692): see the National Lottery Regulations 1994, SI 1994/189, reg 6(1).

18 National Lottery Regulations 1994, SI 1994/189, reg 7.

19 See PARA 711.

UPDATE

709-711 Power to make regulations as to the promotion of lotteries ... Contravention of regulations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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(v) Offences

711. Contravention of regulations.

If any requirement or restriction imposed by regulations¹ is contravened² in relation to the promotion³ of a lottery that forms part of the National Lottery⁴:

- 2528 (1) the promoter of the lottery⁵ is guilty of an offence, except if the contravention occurred without the consent or connivance of the promoter and the promoter exercised all due diligence to prevent such a contravention⁶;
- 2529 (2) any director, manager, secretary or other similar officer of the promoter, or any person purporting to act in such a capacity, is guilty of an offence if he consented to or connived at the contravention or if the contravention was attributable to any neglect on his part⁷; and
- 2530 (3) any other person who was party to the contravention is guilty of an offence⁸.

A person guilty of an offence under this provision is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both⁹.

1 The regulations made under the National Lottery etc Act 1993 s 12: see PARAS 709-710.

2 As to the meaning of 'contravened' see PARA 701 note 2.

3 As to the meaning of 'promotion' see PARA 687 note 4.

4 National Lottery etc Act 1993 s 13(1). As to the National Lottery see PARA 687; as to the meaning of 'lottery' see PARA 687 note 1; and as to references to lotteries forming part of the National Lottery see PARA 687 notes 2, 13.

5 As to the licensing of persons to promote lotteries see PARA 692 (existing licensing system), PARA 694 (prospective new licensing system).

6 National Lottery etc Act 1993 s 13(1)(a).

7 National Lottery etc Act 1993 s 13(1)(b).

8 National Lottery etc Act 1993 s 13(1)(c).

9 National Lottery etc Act 1993 s 13(2). As to the statutory maximum see PARA 247 note 13.

UPDATE

709-711 Power to make regulations as to the promotion of lotteries ... Contravention of regulations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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712. False representations as to the National Lottery.

If a person advertising, or offering the opportunity to participate in, a lottery¹, competition or game of another description gives, by whatever means, a false indication that it is a lottery forming part of, or is otherwise connected with, the National Lottery², he is guilty of an offence³. A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to imprisonment for a term not exceeding two years or a fine or to both⁴.

1 As to the meaning of 'lottery' see PARA 687 note 1.

2 As to the National Lottery see PARA 687; and as to references to a lottery forming part of the National Lottery see PARA 687 notes 2, 13.

3 National Lottery etc Act 1993 s 16(1).

4 National Lottery etc Act 1993 s 16(2). As to the statutory maximum see PARA 247 note 13.

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(3) DISTRIBUTION OF THE NET PROCEEDS OF THE NATIONAL LOTTERY AND OLYMPIC LOTTERIES

(i) The National Lottery Distribution Fund

713. The National Lottery Distribution Fund.

There is a fund maintained under the control and management of the Secretary of State¹ and known as the National Lottery Distribution Fund ('the distribution fund')².

Every sum that is paid into the distribution fund by virtue of a condition in a licence³ or by way of financial penalty⁴ must be apportioned as follows⁵. So much of the sum as the Secretary of State⁶ considers appropriate must be allocated for making payments into the Consolidated Fund⁷ and held in the distribution fund for that purpose⁸. Of the balance:

- 2531 (1) 16 and two-thirds per cent⁹ must be allocated for expenditure on or connected with the arts;
 - 2532 (2) 16 and two-thirds per cent per cent must be allocated for expenditure on or connected with sport;
 - 2533 (3) 16 and two-thirds per cent must be allocated for expenditure on or connected with the national heritage¹⁰; and
 - 2534 (4) 50 per cent must be allocated for prescribed expenditure¹¹ that is:
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- 304. (a) charitable¹²; or
 - 305. (b) connected with health¹³; or
 - 306. (c) connected with education¹⁴; or
 - 307. (d) connected with the environment¹⁵,
- 194

including, in each case, for establishing or contributing to endowments¹⁶ in connection with such expenditure¹⁷.

For the purposes of head (4) above, in relation to England and Wales the following descriptions of expenditure are prescribed as devolved expenditure¹⁸:

- 2535 (i) expenditure on or connected with the promotion of community learning, promotion of community safety¹⁹ and cohesion and the promotion of physical and mental well being²⁰;
- 2536 (ii) expenditure on or connected with small scale projects in local communities which involve people within those communities²¹.

The following description of expenditure is prescribed as non-devolved expenditure, namely expenditure on or connected with projects which are intended to transform communities, regions or the nation as a whole²².

1 As to the Secretary of State see PARA 2.

2 National Lottery etc Act 1993 ss 21(1), 44(1).

3 le by virtue (1) at the date at which this title state the law, of the National Lottery etc Act 1993 s 5(6) (see PARA 691); or (2) as from a day to be appointed under the National Lottery Act 2006 s 6(1) (see PARA 687), of the National Lottery etc Act 1993 s 5(2)(c) (as that provision has effect in relation to the new licensing system to be introduced by the Lottery Act 2006 (see PARA 694)).

4 le by virtue of the National Lottery etc Act 1993 s 10A: see PARA 702.

5 See the National Lottery etc Act 1993 s 22(1) (amended by the Horserace Betting and Olympic Lottery Act 2004 s 34(1), (9)(a); prospectively amended, so as to substitute for a reference to the National Lottery etc Act 1993 s 5(6) a reference to s 5(2)(c) (see note 3), by the National Lottery Act 2006 Sch 1 paras 1, 12, as from a day to be appointed under s 6(1); at the date at which this volume states the law, no such day had been appointed and the latter amendment was not in force).

The National Lottery etc Act 1993 s 22 has effect subject to the National Lottery Act 1998 s 19 (see PARA 741) and the Horserace Betting and Olympic Lottery Act 2004 s 25 (see PARA 717): National Lottery etc Act 1993 s 22(4) (added by the National Lottery Act 1998 s 19(7); amended by the Horserace Betting and Olympic Lottery Act 2004 s 34(1), (9)(c)).

6 As to the Secretary of State see PARA 2.

7 le under the National Lottery etc Act 1993 s 31: see PARA 714.

8 National Lottery etc Act 1993 s 22(2).

9 The Secretary of State may by order amend the National Lottery etc Act 1993 s 22(3) (see heads (1)-(4) in the text) so as to substitute different percentages for any of the percentages for the time being specified there: s 28(1). Any amendment so made must be such that no percentage lower than 5% is specified in s 22(3), and the percentages there specified amount in total to 100%: s 28(2). Any such order may make different provision for different cases or circumstances (s 60(4)); and may make such incidental, supplemental and transitional provision as the Secretary of State thinks appropriate (s 60(5)). Without prejudice to the generality of s 60(5), an order under s 28 may provide for sums that apart from the order would be held in the distribution fund for distribution by a particular body to be held in the distribution fund for distribution by another body specified in s 23 (see PARA 721): s 28(3). In the exercise of his powers under s 28, the Secretary of State has made the Apportionment of Money in the National Lottery Distribution Fund Order 1999, SI 1999/344, art 3, prescribing the percentages set out in heads (1)-(3) in the text.

10 'Expenditure on or connected with the national heritage' means expenditure for any purpose for which expenditure may be incurred under the National Heritage Act 1980 s 3, s 3A or s 4 (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 816): National Lottery etc Act 1993 s 44(1) (definition amended by the National Heritage Act 1997 Schedule para 5(a)). For the purposes of this definition of 'expenditure on or connected with the national heritage', any reference in the National Heritage Act 1980 s 3, s 3A or s 4 to the opinion of the trustees is to be read, in relation to any body other than the trustees of the National Heritage Memorial Fund that is for the time being specified in the National Lottery etc Act 1993 s 23(3) (see PARA 721), as a reference to the opinion of that body: s 44(2) (amended by the National Heritage Act 1997 Schedule para 5(b)).

11 For these purposes, 'prescribed expenditure' means expenditure of a description prescribed by order of the Secretary of State: National Lottery etc Act 1993 s 22(3A) (s 22(3A)-(3C) added by the National Lottery Act 2006 s 7(1), (3)). A description of expenditure under the National Lottery etc Act 1993 s 22(3A) may, in particular, refer to expenditure in relation to England, Wales, Scotland, Northern Ireland, the Isle of Man or as from a date to be appointed under the National Lottery Act 2006 s 22, any of the Channel Islands: National Lottery etc Act 1993 s 22(3B) (as so added; at the date at which this volume states the law, however, s 22(3B) (e), which refers to the Channel Islands, had not been brought into force). Before making an order under s 22(3A), the Secretary of State must consult the Big Lottery Fund, the Welsh Ministers, the Scottish Ministers, the Northern Ireland Department of Culture, Arts and Leisure, and such other persons (if any) as he thinks appropriate: see s 22(3C) (as so added). As to the Big Lottery Fund see PARA 729. In the exercise of his powers under s 22(3A), the Secretary of State has made the Big Lottery Fund (Prescribed Expenditure) Order 2006, SI 2006/3202, which came into force on 1 December 2006: see art 1(1). See further the text and notes 19-22.

12 'Charitable', in relation to expenditure, means expenditure for a charitable, benevolent or philanthropic purpose: National Lottery etc Act 1993 s 44(1) (definition substituted by the National Lottery Act 2006 s 20).

13 A project or arrangement is be regarded for the purposes of the National Lottery etc Act 1993 Pt II (ss 21-44, Schs 4-6) as concerned or connected with health, education or the environment notwithstanding that it contains incidental provision which is not concerned or connected with any of those matters but which is necessary or expedient for the purposes of the project or arrangement: s 44(3) (added by the National Lottery Act 1998 s 8(2)).

14 For these purposes, 'education' includes training and the provision of activities for children: National Lottery etc Act 1993 s 44(1) (definition added by the National Lottery Act 1998 s 6(8)). See also note 13.

15 For these purposes, 'the environment' includes the living and social environment: National Lottery etc Act 1993 s 44(1) (definition added by the National Lottery Act 1998 s 6(8)). See also note 13.

16 For these purposes, 'endowment' includes permanent endowment: National Lottery etc Act 1993 s 44(1) (definition added by the National Lottery (Funding of Endowments) Act 2003 s 1(1), (8)).

17 National Lottery etc Act 1993 s 22(3) (amended by the National Lottery (Funding of Endowments) Act 2003 s 1(1), (2), (9); the Horserace Betting and Olympic Lottery Act 2004, s 34(1), (9)(b); the National Lottery Act 2006 s 7(1), (2); and by SI 1999/344).

18 Expenditure described by virtue of the National Lottery etc Act 1993 s 22(3B) (see note 11) is referred to as 'devolved expenditure': s 22(3B) (as added: see note 11).

19 The reference in head (i) in the text to promoting community safety is to making communities places in which it is, or is perceived to be, safer to live or work, in particular by the reduction of actual or perceived levels of crime and other anti-social behaviour: Big Lottery Fund (Prescribed Expenditure) Order 2006, SI 2006/3202, art 2(3).

20 See the Big Lottery Fund (Prescribed Expenditure) Order 2006, SI 2006/3202, art 2(1), (2).

21 See the Big Lottery Fund (Prescribed Expenditure) Order 2006, SI 2006/3202, art 3(1), (2).

22 See the Big Lottery Fund (Prescribed Expenditure) Order 2006, SI 2006/3202, art 4(1), (2).

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714. Payments from the National Lottery Distribution Fund in respect of expenses.

At such times as the Secretary of State¹ with the approval of the Treasury determines to be appropriate, payments must be made into the Consolidated Fund² out of so much of any money in the National Lottery Distribution Fund as is held³ for that purpose⁴. The payments must be of such amounts as the Secretary of State with the approval of the Treasury determines to be appropriate for:

- 2537 (1) meeting payments made or to be made to defray the expenditure of the National Lottery Commission⁵;
- 2538 (2) defraying expenses incurred or to be incurred by the Secretary of State in exercising his functions under the National Lottery etc Act 1993; and
- 2539 (3) defraying expenses incurred or to be incurred by the National Debt Commissioners in making investments⁶ under the relevant statutory provision⁷.

1 As to the Secretary of State see PARA 2.

2 As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711.

3 Ie under the National Lottery etc Act 1993 s 22(2); see PARA 713. As to the National Lottery Distribution Fund see PARA 713.

4 National Lottery etc Act 1993 s 31(1).

5 Ie payments under the National Lottery etc Act 1993 Sch 2A para 10: see PARA 7. As to the National Lottery Commission see PARA 7. In determining what amounts are appropriate for meeting the payments referred to in head (1) in the text, the Secretary of State was to take into account sums paid or to be paid into the Consolidated Fund under s 7(6) (repealed): see s 31(4) (added by the National Lottery Act 1998 Sch 1 para 15(4)).

6 Ie under the National Lottery etc Act 1993 s 32: see PARA 715.

7 See the National Lottery etc Act 1993 s 31(2) (amended by the National Lottery Act 1998 Sch 1 para 15(2), Sch 5 Pt I).

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715. Investment of the National Lottery Distribution Fund.

So much of any money in the National Lottery Distribution Fund ('the distribution fund')¹ as is neither held for the purpose of making payments into the Consolidated Fund² nor immediately required for making payments to the distributing bodies³ may be paid over to the National Debt Commissioners and invested by them in accordance with such directions as may be given by the Treasury⁴. The proceeds⁵ of any investment so made may be reinvested by the National Debt Commissioners in accordance with such directions as may be given by the Treasury⁶. Those proceeds must, if they are not so reinvested, be paid into the distribution fund⁷.

1 As to the National Lottery Distribution Fund see PARA 713.

2 Ie held under the National Lottery etc Act 1993 s 22(2): see PARA 713.

3 Ie under National Lottery etc Act 1993 s 24: see PARA 721.

4 National Lottery etc Act 1993 s 32(1). As to the giving of directions generally see s 61; and PARA 7 note 27.

5 For these purposes, 'proceeds', in relation to an investment, means any interest or dividends received in respect of the investment and any sums received on the realisation of the investment: National Lottery etc Act 1993 s 32(4).

6 National Lottery etc Act 1993 s 32(2).

7 National Lottery etc Act 1993 s 32(3). Those proceeds are to be treated as paid into the distribution fund by virtue (1) at the date at this volume states the law, of s 5(6) (as that provision has effect in relation to the existing licensing system) (see PARA 691); (2) as from a day to be appointed under the National Lottery Act 2006 s 6(1), of the National Lottery etc Act 1993 s 5(2)(c) (as that provision has effect in relation to the prospective new licensing system (see PARA 694): see s 32(3) amended by the National Lottery Act 2006 s 9(a) and, as from a day to be appointed under s 6(1), prospectively amended by Sch 1 paras 1, 13, so as to substitute for the reference to the National Lottery etc Act 1993 s 5(6) a reference to s 5(2)(c); at the date at which this volume states the law, no such day had been appointed and the latter amendment was not in force).

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716. Accounts of the Secretary of State and the National Debt Commissioners.

The Secretary of State¹ must prepare accounts in respect of the National Lottery Distribution Fund², and the National Debt Commissioners must prepare accounts in respect of any investments of that fund³, in such form, and in such manner and at such times, as the Treasury may direct⁴. Each account so prepared must be sent to the Comptroller and Auditor General who must examine, certify and report on it and must lay copies of it and of his report before Parliament⁵.

For the purpose of exercising his examination function⁶ in relation to any accounts so prepared by the Secretary of State, the Comptroller and Auditor General has a right:

- 2540 (1) of access at all reasonable times to any documents⁷ which he reasonably requires which are in the custody or under the control of any section 5 licensee⁸; and
- 2541 (2) to require from any officer or employee of any section 5 licensee, or from the auditors of any section 5 licensee, an explanation of, or information relating to, any such documents⁹.

For the purpose of so exercising his examination function or of deciding whether, or to what extent, to exercise any right conferred by heads (1) and (2) above, the Comptroller and Auditor General must have regard to any information which the National Lottery Commission ('the Commission')¹⁰ has obtained from any section 5 licensee and which is relevant to the exercise of that function¹¹.

Where, in exercising his examination function in relation to any accounts so prepared by the Secretary of State, the Comptroller and Auditor General obtains any information which gives him grounds to believe that a section 5 licensee has, or may have, contravened¹² any of the conditions of its or his licence, the Comptroller and Auditor General must as soon as practicable disclose that information to the Commission¹³.

A section 5 licensee is under a duty:

- 2542 (a) to permit the Comptroller and Auditor General to exercise the right conferred by head (1) above; and
- 2543 (b) to do all that may be reasonably practicable to secure that any person who under head (2) above is required to provide an explanation of, or information relating to, any document complies with that requirement;

and any breach of that duty is actionable at the suit of the Comptroller and Auditor General¹⁴.

1 As to the Secretary of State see PARA 2.

2 As to the National Lottery Distribution Fund see PARA 713.

3 Ie any investments under the National Lottery etc Act 1993 s 32: see PARA 715.

4 See the National Lottery etc Act 1993 s 33(1), (2). Section 33 applies in relation to the Olympic Lottery Distribution Fund (see PARA 717) as it applies in relation to the National Lottery Distribution Fund: (1) taking the reference to the Secretary of State as a reference to the Secretary of State or the Paymaster General; and (2) taking the reference to s 32 as a reference to the Horserace Betting and Olympic Lottery Act 2004 s 27 (see PARA 719); and (3) with any other necessary modifications: s 34(11) (amended by SI 2007/2129). See also the Transfer of Functions (Olympics and Paralympics) Order 2007, SI 2007/2129, art 3(2)(a)(iii) which provides for the concurrent exercise of the Secretary of State's and the Paymaster General's powers in connection with the 2004 Act.

5 National Lottery etc Act 1993 s 33(3).

6 For these purposes, 'examination function', in relation to the Comptroller and Auditor General, means his function under the National Lottery etc Act 1993 s 33(3): s 33(10) (s 33(4)-(10) added by the National Lottery Act 1998 s 5).

7 For these purposes, any reference to documents includes a reference to information held by means of a computer or in any other electronic form; and in the case of information so held the right of access conferred by the National Lottery etc Act 1993 s 33(4)(a) (see head (1) in the text) includes a right of access to, and to take copies of, that information in a visible and legible form: s 33(9) (as added: see note 6).

8 National Lottery etc Act 1993 s 33(4)(a) (as added: see note 6). The right of access to documents conferred by s 33(4)(a) includes a right to take copies of or make extracts from documents: s 33(8) (as so added). For these purposes, 'section 5 licensee' means a body which holds or has held a licence under s 5 (see PARAS 691, 694): s 33(10) (as so added). Note, however, that both under the existing licensing system (see PARA 691) and the prospective new licensing system (see PARA 694) a licensee under s 5 is now described as a 'person' and not as a 'body'. A section 5 licensee is not, by virtue only of s 33(4), a body to which the National Audit Act 1983 s 6 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 717) applies: National Lottery etc Act 1993 s 33(4).

9 National Lottery etc Act 1993 s 33(4)(b) (as added: see note 6). See also note 8.

10 As to the National Lottery Commission see PARA 7.

11 National Lottery etc Act 1993 s 33(5) (as added (see note 6); s 33(5), (6) amended by virtue of the National Lottery Act 1998 Sch 1 para 4).

12 As to the meaning of 'contravened' see PARA 701 note 2.

13 National Lottery etc Act 1993 s 33(6) (as added and amended: see notes 6, 11).

14 National Lottery etc Act 1993 s 33(7) (as added: see note 6).

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(ii) The Olympic Lottery Distribution Fund

717. Establishment of the Olympic Lottery Distribution Fund; payments into that fund from National Lottery proceeds or from the National Lottery Distribution Fund.

There is a fund maintained under the control and management of the Secretary of State¹ or the Paymaster General and known as the Olympic Lottery Distribution Fund².

Where a sum is required by virtue of a licence condition³ to be paid⁴ into the National Lottery Distribution Fund⁵, the proportion of that sum attributable to Olympic Lotteries⁶ must instead be paid into the Olympic Lottery Distribution Fund⁷. A sum due to be so paid is recoverable by the Secretary of State as a debt due to the Olympic Lottery Distribution Fund and the licensee's liability to pay is not affected by his licence ceasing to have effect⁸.

The Secretary of State may make an order permitting him to make payments from the National Lottery Distribution Fund into the Olympic Lottery Distribution Fund⁹. A payment by virtue of such an order is to be treated as if paid out of money allocated for such of the purposes for which expenditure may be allocated¹⁰ as the order is to specify¹¹. Before making such an order the Secretary of State must consult each of the relevant¹² distributing bodies¹³. The Payments into the Olympic Lottery Distribution Fund etc Order 2008¹⁴ permits the Secretary of State to make such payments during periods commencing on or after 1 February 2009¹⁵.

1 As to the Secretary of State see PARA 2.

2 Horserace Betting and Olympic Lottery Act 2004 s 23 (amended by SI 2007/2129).

3 Ie required (1) at the date at which this volume states the law, by virtue of the National Lottery etc Act 1993 s 5(6) (as that provision has effect in relation to the existing licensing system) (see PARA 691); or (2) as from a day to be appointed under the National Lottery Act 2006 s 6(1) (see PARA 687), by virtue of the National Lottery etc Act 1993 s 5(2)(c) (as that provision has effect in relation to the prospective new licensing system) (see PARA 694).

4 Ie paid (1) at the date at which this volume states the law, out of proceeds of lotteries in respect of a period; or (2) as from a day to be appointed under the National Lottery Act 2006 s 6(1) (see PARA 687), out of proceeds of lotteries promoted in reliance on a licence.

5 As to the National Lottery Distribution Fund see PARA 713.

6 Ie such proportion as (1) at the date at which this volume states the law, is determined in accordance with the Horserace Betting and Olympic Lottery Act 2004 s 21(2) or (4) (see PARA 697) to be so attributable; or (2) as from a day to be appointed under the National Lottery Act 2006 s 6(1) (see PARA 687), is so attributable.

7 See the Horserace Betting and Olympic Lottery Act 2004 s 24(1). The wording of s 24 as originally enacted is as set out at head (1) in notes 3, 4, 6. However, s 24(1) is prospectively substituted by the National Lottery Act 2006 Sch 1 para 16(1), (4), as from a day to be appointed under s 6(1); the wording of the Horserace Betting and Olympic Lottery Act 2004 s 24(1) as so prospectively substituted is as set out at head (2) in notes 3, 4, 6. At the date at which this volume states the law, no such day had been appointed and that substitution was not in force.

8 See the Horserace Betting and Olympic Lottery Act 2004 s 24(2) which applies the National Lottery etc Act 1993 s 9(3), cited in PARA 701, for these purposes with appropriate modifications.

- 9 Horserace Betting and Olympic Lottery Act 2004 s 25(1).
- 10 le such of the purposes listed in the National Lottery etc Act 1993 s 22(3): see PARA 713.
- 11 Horserace Betting and Olympic Lottery Act 2004 s 25(2).
- 12 le each of the bodies for the time being mentioned in the National Lottery etc Act 1993 s 23: see PARA 721.
- 13 Horserace Betting and Olympic Lottery Act 2004 s 25(3).
- 14 le the Payments into the Olympic Lottery Distribution Fund etc Order 2008, SI 2008/255.
- 15 See the Payments into the Olympic Lottery Distribution Fund etc Order 2008, SI 2008/255, art 2.

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718. Payments out of the Olympic Lottery Distribution Fund.

The Secretary of State¹ or the Paymaster General:

- 2544 (1) may pay sums from the Olympic Lottery Distribution Fund² to the Olympic Lottery Distributor³;
- 2545 (2) may make regulations permitting payments from the Olympic Lottery Distribution Fund⁴:
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- 308. (a) in respect of expenses of the Secretary of State or the Paymaster General in connection with his statutory functions⁵ with regard to Olympic Lotteries⁶;
- 309. (b) in respect of expenses incurred or to be incurred by the National Debt Commissioners in making investments⁷ of money in the fund⁸;
- 310. (c) into the National Lottery Distribution Fund⁹;
- 311. (d) to the Greater London Authority¹⁰;
- 312. (e) to the National Olympic Committee of the United Kingdom¹¹;
- 313. (f) into the Consolidated Fund for the purpose of meeting payments made or to be made¹² to defray the expenses of the National Lottery Commission¹³.
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Regulations by virtue of head (2)(a) and (b) above are to permit payment only with the consent of the Treasury¹⁴.

In the exercise of these powers, the Secretary of State has made the Olympic Lotteries (Payments out of Fund) Regulations 2006¹⁵.

1 As to the Secretary of State see PARA 2.

2 As to the Olympic Lottery Distribution Fund see PARA 717.

3 Horserace Betting and Olympic Lottery Act 2004 s 26(1) (s 26(1), (2), (4), (5) amended by SI 2007/2129). As to the Olympic Lottery Distributor see PARA 735.

4 Horserace Betting and Olympic Lottery Act 2004 s 26(2) (as amended: see note 3).

5 I.e. his functions under the Horserace Betting and Olympic Lottery Act 2004 Pt 3 (ss 21-37): see PARAS 697-698, 717, 719-720, 735 et seq.

6 Horserace Betting and Olympic Lottery Act 2004 s 26(2)(a) (as amended: see note 3); and see the text and note 14. Such payments are to be made at such times and for such amounts as the Secretary of State or the Paymaster General determines to be appropriate: Olympic Lotteries (Payments out of Fund) Regulations 2006, SI 2006/655, reg 2(1)(a) (amended by SI 2007/2129).

7 I.e. under the Horserace Betting and Olympic Lottery Act 2004 s 27: see PARA 719.

8 Horserace Betting and Olympic Lottery Act 2004 s 26(2)(b); and see the text and note 14. Such payments are to be made at such times and for such amounts as the Secretary of State or the Paymaster General determines to be appropriate: Olympic Lotteries (Payments out of Fund) Regulations 2006, SI 2006/655, reg 2(1)(b) (amended by SI 2007/2129).

9 Horserace Betting and Olympic Lottery Act 2004 s 26(2)(c). As to the National Lottery Distribution Fund see PARA 713. Regulations by virtue of s 26(2)(c) must in respect of each payment specify, or enable the Secretary of State or the Paymaster General to specify, whether it is to be (1) treated as having been paid into the National Lottery Distribution Fund by virtue of (a) at the date at which this volume states the law, the National Lottery etc Act 1993 s 5(6) (as that provision has effect under the existing licensing system) (see PARA 691); or (b) as from a day to be appointed under the National Lottery Act 2006 s 6(1) (see PARA 687), the National Lottery etc Act 1993 s 5(2)(c) (as that provision has effect under the prospective new licensing system) (see PARA 694); or (2) allocated entirely for expenditure on or connected with sport and held in accordance with s 23(2) (distributing bodies for sports: see PARA 721): Horserace Betting and Olympic Lottery Act 2004 s 26(4) (as amended (see note 3); further prospectively amended, as from a day to be appointed under the National Lottery Act 2006 s 6(1), by Sch 1 para 16(1), (5), so as to substitute for the reference to the National Lottery etc Act 1993 s 5(6) a reference to s 5(2)(c); at the date at which this volume states the law, no such day had been appointed and the latter amendment was not in force). Regulations so made may, in respect of a payment allocated in accordance with head (2) above, provide, or enable the Secretary of State or the Paymaster General to provide, for the National Lottery etc Act 1993 to apply with specified modifications (which may, in particular, include modifications reducing a distributor's share to nil): Horserace Betting and Olympic Lottery Act 2004 s 26(5) (as amended: see note 3).

10 Horserace Betting and Olympic Lottery Act 2004 s 26(2)(d). Money paid to the Greater London Authority by virtue of s 26(2)(d) may be used by the authority for any purpose for which it is authorised to incur expenditure: s 26(6). As to the Greater London Authority see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 34, 79 et seq.

11 Horserace Betting and Olympic Lottery Act 2004 ss 26(2)(e), 33(1)(b).

12 Ie under the National Lottery etc Act 1993 Sch 2A para 10: see PARA 7.

13 Horserace Betting and Olympic Lottery Act 2004 s 26(2)(f). As to the National Lottery Commission see PARA 7. Such payments are to be made at such times and for such amounts as the Secretary of State or the Paymaster General determines to be appropriate: Olympic Lotteries (Payments out of Fund) Regulations 2006, SI 2006/655, reg 3(1) (amended by SI 2007/2129). In so determining what amounts are appropriate for the purpose of meeting payments made or to be made under the National Lottery etc Act 1993 Sch 2A para 10, the Secretary of State or the Paymaster General must take into account sums paid or to be paid into the Consolidated Fund under s 7(6) (repealed) (see PARA 692) and s 31(2)(aa) (see PARA 714): Olympic Lotteries (Payments out of Fund) Regulations 2006, SI 2006/655, reg 3(2) (as so amended).

14 Horserace Betting and Olympic Lottery Act 2004 s 26(3); and see the Olympic Lotteries (Payments out of Fund) Regulations 2006, SI 2006/655, reg 2(2).

15 Ie the Olympic Lotteries (Payments out of Fund) Regulations 2006, SI 2006/655, which came into force on 31 March 2006: reg 1(1). See further notes 6, 8, 13, 14.

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719. Investment and accounts.

Money in the Olympic Lottery Distribution Fund¹ may be paid to the National Debt Commissioners and invested by them². Proceeds of such an investment may be reinvested by the National Debt Commissioners, and unless reinvested, must be paid into the Olympic Lottery Distribution Fund³. In exercising a function under these provisions the National Debt Commissioners must comply with any direction of the Treasury⁴.

The Secretary of State⁵ or the Paymaster General must prepare accounts in respect of the Olympic Lottery Distribution Fund, and the National Debt Commissioners must prepare accounts in respect of any investments of that fund under the above provisions, in such form, and in such manner and at such times, as the Treasury may direct⁶. The statutory provisions with regard to examination and audit of accounts relating to the National Lottery Distribution Fund⁷ apply, with appropriate modifications, to such accounts⁸.

1 As to the Olympic Lottery Distribution Fund see PARA 717.

2 Horserace Betting and Olympic Lottery Act 2004 s 27(1).

3 Horserace Betting and Olympic Lottery Act 2004 s 27(2).

4 Horserace Betting and Olympic Lottery Act 2004 s 27(3).

5 As to the Secretary of State see PARA 2.

6 See the National Lottery etc Act 1993 s 33(1), (2) (applied with modifications by the Horserace Betting and Olympic Lottery Act 2004 s 34(11) (amended by SI 2007/2129)). See also the Transfer of Functions (Olympics and Paralympics) Order 2007, SI 2007/2129, art 3(2)(a)(iii) which provides for the concurrent exercise of the Secretary of State's and the Paymaster General's powers in connection with the 2004 Act.

7 Ie the National Lottery etc Act 1993 s 33(3)-(10): see PARA 716.

8 See the Horserace Betting and Olympic Lottery Act 2004 s 34(11) (as amended: see note 6).

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720. Prospective winding up of the Olympic Lottery Distribution Fund.

The Secretary of State¹ or the Paymaster General may by order make provision for the winding up of the Olympic Lottery Distribution Fund². Such an order must provide, in particular, for any money in or due to the Olympic Lottery Distribution Fund to be paid into the National Lottery Distribution Fund³. In respect of any payment, such an order must specify, or enable the Secretary of State or the Paymaster General to specify, whether it is to be:

- 2546 (1) treated as having been paid into the National Lottery Distribution Fund by virtue of a licence condition⁴; or
- 2547 (2) allocated entirely for expenditure on or connected with sport and held in accordance with the statutory provision⁵ with regard to distributing bodies for sports⁶.

¹ As to the Secretary of State see PARA 2.

² Horserace Betting and Olympic Lottery Act 2004 s 28(1) (s 28(1), (3) amended by SI 2007/2129). As to the Olympic Lottery Distribution Fund see PARA 717.

³ Horserace Betting and Olympic Lottery Act 2004 s 28(2). As to the National Lottery Distribution Fund see PARA 713.

⁴ I.e. by virtue of (1) at the date at which this volume states the law, the National Lottery etc Act 1993 s 5(6) (as that provision has effect under the existing licensing system) (see PARA 691); or (2) as from a day to be appointed under the National Lottery Act 2006 s 6(1) (see PARA 687), the National Lottery etc Act 1993 s 5(2)(c) (as that provision has effect under the prospective new licensing system) (see PARA 694): see the Horserace Betting and Olympic Lottery Act 2004 s 28(3)(a) (as amended (see note 2); further prospectively amended, as from a day to be appointed under the National Lottery Act 2006 s 6(1), by Sch 1 para 16(1), (6), so as to substitute for the reference to the National Lottery etc Act 1993 s 5(6) a reference to s 5(2)(c); at the date at which this volume states the law, no such day had been appointed and the latter amendment was not in force).

⁵ I.e. in accordance with the National Lottery etc Act 1993 s 23(2) (distributing bodies for sports): see PARA 721.

⁶ Horserace Betting and Olympic Lottery Act 2004 s 28(3) (as amended and prospectively amended: see notes 2, 4). Provision by virtue of s 28(3)(b) (see head (2) in the text) may provide for the National Lottery etc Act 1993 s 23(2) to apply with specified modifications (which may, in particular, include modifications reducing a distributor's share to nil): Horserace Betting and Olympic Lottery Act 2004 s 28(4).

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(iii) Distributing Bodies

A. IN GENERAL

721. The distributing bodies.

So much of any sum paid into the National Lottery Distribution Fund ('the distribution fund')¹ as is allocated for expenditure on or connected with the arts must be held in the distribution fund:

- 2548 (1) as to 69.78 per cent, for distribution by the Arts Council of England²;
- 2549 (2) as to 7.74 per cent, for distribution by the Scottish Arts Council;
- 2550 (3) as to 5 per cent, for distribution by the Arts Council of Wales³;
- 2551 (4) as to 13.52 per cent, for distribution by the Arts Council of Northern Ireland⁴;
- 2552 (5) as to 13.52 per cent, for distribution by the UK Film Council⁵; and
- 2553 (6) as to 1.16 per cent, for distribution by Scottish Screen⁶.

So much of any sum paid into the distribution fund as is allocated for expenditure on or connected with sport must be held in the distribution fund:

- 2554 (a) as to 62 per cent, for distribution by the English Sports Council⁷;
- 2555 (b) as to 8.1 per cent, for distribution by the Scottish Sports Council;
- 2556 (c) as to 4.5 per cent, for distribution by the Sports Council for Wales⁸;
- 2557 (d) as to 2.6 per cent, for distribution by the Sports Council for Northern Ireland; and
- 2558 (e) as to 22.8 per cent, for distribution by the United Kingdom Sports Council⁹.

So much of any sum paid into the distribution fund as is allocated for expenditure on or connected with the national heritage¹⁰ must be held in the distribution fund for distribution by the trustees of the National Heritage Memorial Fund¹¹.

So much of any sum paid into the distribution fund as is allocated for prescribed expenditure¹² must be held in the distribution fund for distribution by the Big Lottery Fund¹³.

The Secretary of State¹⁴ may by order amend the above provisions so as:

- 2559 (i) to substitute a different body for any body for the time being specified therein;
- 2560 (ii) to add another body to the bodies or body for the time being so specified;
- 2561 (iii) to omit any body for the time being so specified;
- 2562 (iv) to substitute different percentages for any percentages for the time being so specified¹⁵.

At such times as the Secretary of State thinks appropriate, payments of such amounts as he thinks appropriate may be made to a distributing body¹⁶ out of so much of any money in the distribution fund as is held for distribution by that body¹⁷.

- 1 As to the National Lottery Distribution Fund see PARA 713.
- 2 As to the Arts Council of England see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 961.
- 3 As to the Arts Council of Wales see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 962.
- 4 As to the UK Film Council see PARA 25.
- 5 As to the Arts Council of Northern Ireland see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 961.
- 6 National Lottery etc Act 1993 s 23(1) (amended by SI 1994/1342; SI 1995/2088; SI 1999/2090; SSI 2000/78; SI 2007/743). As to the Secretary of State's powers to amend the National Lottery etc Act 1993 s 23(1) by order see s 29; and the text and notes 14-15.
- 7 As to the English Sports Council see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 965.
- 8 As to the Sports Council for Wales see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 965.
- 9 National Lottery etc Act 1993 s 23(2) (amended by SI 1996/3095; SI 1999/1563; SI 2006/654). As to the Secretary of State's powers to amend the National Lottery etc Act 1993 s 23(2) by order see s 29; and the text and notes 14-15.
- 10 As to the meaning of 'expenditure on or connected with the national heritage' see PARA 713 note 10.
- 11 National Lottery etc Act 1993 s 23(3). As to the National Heritage Memorial Fund see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARAS 815-817. As to the Secretary of State's powers to amend s 23(3) by order see s 29; and the text and notes 14-15.
- 12 I.e. expenditure under the National Lottery etc Act 1993 s 22(3)(d); see PARA 713.
- 13 National Lottery etc Act 1993 s 23(4) (substituted by the National Lottery Act 2006 s 15(1)). As to the Big Lottery Fund see PARA 729. As to the Secretary of State's powers to amend the National Lottery etc Act 1993 s 23(4) by order see s 29; and the text and notes 14-15.
- 14 As to the Secretary of State see PARA 2. With regard to Wales, the Secretary of State's functions under the National Lottery etc Act 1993 s 29(1) (see the text and note 15) or s 29(3)(b) (see note 15 head (b)) are exercisable, so far as they relate to the Arts Council of Wales and the Sports Council for Wales, only with the agreement of the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999/672, art 5, Sch 2. So far as those functions relate to Scotland, they are exercisable only with the agreement of the Scottish Ministers: see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, arts 2, 4, Schs 1, 3. As to Scotland see also the National Lottery etc Act 1993 s 29(6) (added by SI 1999/1756).
- 15 National Lottery etc Act 1993 s 29(1). Any such amendment must be such that the amended subsection in question (1) provides for the whole of the sum mentioned in it to be held for distribution by the one body specified therein; or (2) provides for the whole of that sum to be held for distribution by the two or more bodies specified therein and specifies, in relation to each of those bodies, what percentage of that sum is to be held for distribution by that body: s 29(2). The Secretary of State may by order provide that s 23(1), (2), (3) or (4) is, pending the making of an order amending that subsection under s 29(1): (a) to cease to have effect; (b) or to have effect as if any of the bodies for the time being specified in it were omitted: s 29(3); and see note 14. Without prejudice to the generality of s 60(5) (general power to make orders), an order made under s 29(1) may provide for sums that apart from the order would be held in the distribution fund for distribution by a particular body to be held in the distribution fund for distribution by another body (being a body that on the coming into force of the order is specified in the subsection amended by the order); and an order made under s 29(3) may provide for sums that apart from the order would be held in the distribution fund for distribution by a particular body to be held in the distribution fund in the name of the Secretary of State, pending being held for distribution by another body in accordance with the order to be made under s 29(1): s 29(4). Without prejudice to the generality of s 29(1), the Secretary of State may exercise his powers thereunder so as to remove from s 23 any body that has contravened or failed to comply with a requirement or prohibition imposed on it by or under s 26 or s 27 (see PARA 726): s 29(5). In exercise of these powers of amendment, the Secretary of State has made the orders cited in notes 6, 9.
- 16 I.e. a body specified in the National Lottery etc Act 1993 s 23 (see the text and notes 1-14) or in an order under s 29A (see PARA 726).
- 17 National Lottery etc Act 1993 s 24 (amended the National Lottery Act 2006 s 8(2)).

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722. Application of money by distributing bodies.

A distributing body¹ must distribute any money² paid to it from the National Lottery Distribution Fund ('the distribution fund')³ for meeting expenditure⁴ of the relevant⁵ description⁶. The manner in which a body may distribute any money so paid to it includes making or entering into arrangements for or in connection with meeting expenditure, including arrangements with respect to vouchers; and this applies notwithstanding anything to the contrary in any enactment or instrument relating to the functions of the body⁷. Subject to that, a distributing body must not distribute money for any purpose or in any manner under the above provisions if it does not otherwise⁸ have power to distribute money for that purpose or in that manner⁹.

A body which distributes money under the above provisions has power to solicit applications from other bodies or persons for any of the money which the body so distributes, notwithstanding anything to the contrary in any enactment or instrument relating to the functions of the body¹⁰; and in determining whether a decision of a body concerning its distribution of money was unlawful, it is immaterial whether or not the body, or any person acting on behalf of the body, solicited an application from a body or person for such money¹¹. In determining how to distribute money in accordance with the above provisions a body may consult any person and take account of opinions expressed to it or information submitted to it¹².

A body may defray out of any money paid to it from the distribution fund¹³ any expenses incurred by the body in consequence of the National Lottery etc Act 1993¹⁴.

A body which distributes money under the above provisions may make or participate in arrangements for:

- 2563 (1) publishing information relating to the effect of a provision of the 1993 Act;
- 2564 (2) publishing information relating to the distribution of money under that Act or the expenditure of money distributed under that Act; or
- 2565 (3) encouraging participation in activities relating to the distribution of money under that Act¹⁵.

1 As to the distributing bodies see PARA 721.

2 Any reference in the National Lottery etc Act 1993 Pt II (ss 21-44, Schs 4-6) to the distribution of money is to be construed as including the making or entering into of arrangements in accordance with s 25(1A) (see PARA 723); and related expressions used in Pt II are to be construed accordingly: s 44(4) (added by the National Lottery Act 1998 s 9(2); amended by the National Lottery Act 2006 Sch 3).

3 I.e. any money paid to it under the National Lottery etc Act 1993 s 24: see PARA 721. As to the National Lottery Distribution Fund see PARA 713.

4 References in the National Lottery etc Act 1993 s 25, however expressed, to the distribution of money for meeting expenditure are to be construed as including distribution of money for the purpose of establishing, or contributing to, endowments in connection with expenditure of the description concerned: s 25(5) (added by the National Lottery (Funding of Endowments) Act 2003 s 1(1), (3)). As to the meaning of 'endowment' see PARA 713 note 16. A reference in the National Lottery etc Act 1993 s 25 to meeting expenditure includes a reference to meeting expenditure which relates to the Isle of Man, or, as from a day to be appointed under the National Lottery Act 2006 s 22, to any of the Channel Islands: National Lottery etc Act 1993 s 25(6) (added by the

National Lottery Act 2006 s 13(1); at the date at which this volume states the law, however, the National Lottery etc Act 1993 s 25(6)(b), which refers to the Channel Islands, was not in force).

5 le expenditure of the relevant description mentioned in the National Lottery etc Act 1993 s 22(3): see PARA 713.

6 National Lottery etc Act 1993 s 25(1). A reference in the National Lottery etc Act 1993 to payment under s 25(1) includes a reference to payment under s 36C(3) (see PARA 732): s 36C(5) (added by the National Lottery Act 2006 s 15(2)).

7 National Lottery etc Act 1993 s 25(1A) (added by the National Lottery Act 1998 s 9(1)).

8 le apart from the National Lottery etc Act 1993 s 25(1).

9 National Lottery etc Act 1993 s 25(2). The trustees of the National Heritage Memorial Fund may apply any money paid to them under s 24 for any purpose for which they have power to apply money under the National Heritage Act 1980 s 4 (other expenditure out of the fund: see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 816): National Lottery etc Act 1993 s 25(4) (amended by the National Heritage Act 1997 Schedule para 4).

10 National Lottery etc Act 1993 s 25(2A) (s 25(2A)-(2C) added by the National Lottery Act 2006 s 10).

11 National Lottery etc Act 1993 s 25(2B) (as added: see note 10).

12 National Lottery etc Act 1993 s 25(2C) (as added: see note 10).

13 See note 3.

14 National Lottery etc Act 1993 s 25(3).

15 National Lottery etc Act 1993 s 25E (added by the National Lottery Act 2006 s 11).

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723. Delegation by distributing bodies of their powers of distribution.

A body which distributes money¹ under the relevant statutory provision² may appoint any other body³ or person to exercise on its behalf any of its functions relating to, or connected with, the distribution of money under that provision, including its function of making decisions as to the persons to whom such distributions are to be made, either in any particular case, or in cases of any particular description⁴. The persons who may be so appointed by a body include a member, employee or committee⁵ of the body itself⁶.

A body which makes such an appointment may defray out of any money paid to it from the National Lottery Distribution Fund⁷ any expenses incurred by the appointee in consequence of the appointment⁸.

Power to accept any such appointment as is mentioned above is conferred⁹ on the following bodies:

- 2566 (1) any body which distributes money under the relevant statutory provision¹⁰;
- 2567 (2) any charity¹¹ or any charitable, benevolent or philanthropic institution¹²;
- 2568 (3) any body established by or under an enactment; and
- 2569 (4) any body established by Royal Charter¹³.

A body so appointed to exercise a function on behalf of another may itself appoint any of its members¹⁴ or employees, or a committee, to exercise the function in its stead, but only if the terms of the body's appointment so permit, and if the body otherwise has power to appoint a member or, as the case may be, an employee or committee of the body to exercise some or all of its functions¹⁵.

A body which distributes money under the relevant statutory provision¹⁶ may¹⁷ establish a committee for the purpose of exercising on behalf of the body any of its functions relating to, or connected with, the distribution of money under that provision, including its function of making decisions as to the persons to whom such distributions are to be made, either in any particular case, or in cases of any particular description¹⁸; and a body falling within any of heads (1) to (4) above may also establish a committee for the purpose of exercising, on behalf of any body which distributes money under the relevant statutory provision¹⁹, any such function²⁰ as is mentioned above²¹. A committee so established:

- 2570 (a) must consist of or include one or more members, or one or more employees, of the body establishing the committee; but
- 2571 (b) may include persons who are neither members nor employees of that body²².

Any power conferred on a body by the provisions set out above is so conferred to the extent that the body would not otherwise have the power in question, and notwithstanding anything to the contrary in any enactment or instrument relating to the functions of the body²³. The powers so conferred may, in particular, be exercised by a body for the purpose of running or otherwise participating in a joint scheme²⁴.

In exercising any power under the above provisions, a body which distributes money²⁵, other than the Big Lottery Fund²⁶, must comply with any directions given to it by the Secretary of State²⁷. Such directions may in particular require a body to obtain the consent of the Secretary of State before doing anything specified, or of a description specified, in the directions; and to provide the Secretary of State at times specified by him with such information as he may require²⁸. They may also, in particular:

- 2572 (i) impose limits on the amount of money which may be distributed²⁹ by a body by virtue of decisions made on its behalf by bodies or persons who are not members, employees or committees of the body itself³⁰; and
- 2573 (ii) require a body, before appointing any body or person who is not a member, employee or committee of the body itself to exercise on its behalf any function of making decisions concerning the distribution of money³¹, to obtain the approval of the Secretary of State to its plans for making such appointments³².

The Secretary of State must consult a body before giving any such directions to it³³.

1 As to the meaning of 'distributes money' see PARA 722 note 2.

2 Ie under the National Lottery etc Act 1993 s 25(1): see PARA 722. A reference in the National Lottery etc Act 1993 to payment under s 25(1) includes a reference to payment under s 36C(3) (see PARA 732): see PARA 722 note 6.

3 For these purposes, the trustees of a trust are to be regarded as a body: National Lottery etc Act 1993 s 25A(10)(a) (s 25A added by the National Lottery Act 1998 s 11(1)).

4 National Lottery etc Act 1993 s 25A(1) (as added: see note 3). A body established under the law of the Isle of Man may be the subject of such an appointment in connection with expenditure which relates to the Isle of Man: s 25A(12) (added by the National Lottery Act 2006 s 13(2)). As from a day to be appointed under the National Lottery Act 2006 s 22, a body established under the law of any of the Channel Islands may also be the subject of such an appointment in connection with expenditure which relates to that Island: s 25A(13) (prospectively added by the National Lottery Act 2006 s 13(2), as from such a day; at the date at which this volume states the law, no such day had been appointed and the National Lottery etc Act 1993 s 25A(13) was not in force).

5 References to a committee are to be construed in accordance with the National Lottery etc Act 1993 s 25A(10)(a), (b) (see notes 3, 14): s 25A(10) (as added: see note 3).

6 National Lottery etc Act 1993 s 25A(2) (as added: see note 3).

7 Ie the money paid to it under the National Lottery etc Act 1993 s 24: see PARA 721. As to the National Lottery Distribution Fund see PARA 713.

8 National Lottery etc Act 1993 s 25A(3) (as added: see note 3).

9 Ie by the National Lottery etc Act 1993 s 25A(4): see heads (1)-(4) in the text.

10 See note 2.

11 For these purposes, 'charity' means a body, or the trustees of a trust, established for charitable purposes only: National Lottery etc Act 1993 s 25A(9) (as added: see note 3).

12 For these purposes, 'charitable, benevolent or philanthropic institution' means a body, or the trustees of a trust, which is established for charitable purposes (whether or not those purposes are charitable within the meaning of any rule of law), benevolent purposes or philanthropic purposes, and which is not a charity: National Lottery etc Act 1993 s 25A(9) (as added: see note 3).

13 National Lottery etc Act 1993 s 25A(4) (as added: see note 3).

14 For these purposes, any reference to a member of a body (1) is, in the case of a body of trustees, to be taken as a reference to any of the trustees (National Lottery etc Act 1993 s 25A(10)(b) (as added: see note 3));

(2) includes a reference to the chairman or deputy chairman of (or the holder of any corresponding office in relation to) the body (s 25A(11) (as so added)).

15 National Lottery etc Act 1993 s 25A(5) (as added: see note 3).

16 See note 2.

17 Ie subject to the National Lottery etc Act 1993 s 25A(7)-(13): see the text and notes 22-23; and notes 3, 11, 14.

18 See the National Lottery etc Act 1993 s 25A(6)(a) (as added: see note 3). The functions described in the text are any such function as is mentioned in s 25A(1).

19 See note 2.

20 Ie any such function as is mentioned in the National Lottery etc Act 1993 s 25A(1).

21 See the National Lottery etc Act 1993 s 25A(6)(b) (as added: see note 3).

22 National Lottery etc Act 1993 s 25A(7) (as added: see note 3).

23 National Lottery etc Act 1993 s 25A(8) (as added: see note 3).

24 National Lottery etc Act 1993 Sch 3A para 5(1) (added by the National Lottery Act 1998 s 12(3), Sch 3). As to joint schemes see PARA 724.

25 See note 2.

26 As to the Big Lottery Fund see PARA 729.

27 National Lottery etc Act 1993 s 26(3A), (6) (respectively added by the National Lottery Act 1998 s 11(2) and the National Lottery Act 2006 s 19(1), (3)). As to the Secretary of State see PARA 2. So far as they relate to the Arts Council of Wales and the Sports Council for Wales, the Secretary of State's functions of giving such directions are exercisable only with the agreement of the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 5, Sch 2. As to giving directions to bodies in or as regards Scotland see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, arts 2, 4, Schs 1, 3; and see also the National Lottery etc Act 1993 s 26A.

28 National Lottery etc Act 1993 s 26(4) (amended by the National Lottery Act 1998 s 11(3)).

29 See note 2.

30 Ie bodies or persons not falling within the National Lottery etc Act 1993 s 25A(2): see the text and notes 5-6.

31 See note 2.

32 National Lottery etc Act 1993 s 26(4A) (added by the National Lottery Act 1998 s 11(4)).

33 National Lottery etc Act 1993 s 26(5). As to directions generally see PARA 7 note 27.

UPDATE

723 Delegation by distributing bodies of their powers of distribution

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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724. Joint schemes for distribution of money by distributing bodies.

A body which distributes money¹ under the relevant statutory provision² may, in accordance with the following provisions, participate with one or more other such bodies in a joint scheme for the distribution of money under that provision³. A body may participate in a joint scheme if the principal purposes of the joint scheme include purposes for which the body has power to distribute money under that provision, notwithstanding that the body would not otherwise have power to distribute money under that provision for meeting expenditure⁴ on some of the particular projects for which money may be distributed under the scheme⁵. Money must not, however, under a joint scheme, be distributed for meeting expenditure on any particular project unless the expenditure is such that:

- 2574 (1) at least one of the bodies participating in the joint scheme has power, acting alone, to distribute money under the relevant statutory provision⁶ for meeting the expenditure; or
- 2575 (2) two or more of the bodies participating in the joint scheme, taken together, have power between them to distribute money under that provision for meeting the expenditure⁷;

but nothing in that restriction affects the liability of each body participating in a scheme in relation to the distribution of any money⁸ under the scheme⁹.

Where the maximum amount of money which could be distributed¹⁰ under a particular joint scheme in any year¹¹ exceeds £15 million¹², the joint scheme does not have effect unless the Secretary of State¹³ makes an order authorising the scheme¹⁴; and where the maximum amount of money which could be distributed under a particular joint scheme in any year does not exceed that amount, the joint scheme does not have effect unless the Secretary of State gives his written approval¹⁵. Such an order or approval must:

- 2576 (a) contain a brief description of the nature and purposes of the joint scheme;
- 2577 (b) identify the area within the United Kingdom¹⁶ to which the scheme applies;
- 2578 (c) specify the maximum amount of money which may be distributed¹⁷ in any year under the scheme;
- 2579 (d) identify the bodies participating in the scheme;
- 2580 (e) state the proportions in which the money to be distributed¹⁸ under the scheme is attributable to each of those bodies; and
- 2581 (f) state the duration of the scheme, if its duration is limited¹⁹.

The powers conferred on a body to participate in a joint scheme²⁰ are in addition to, and do not derogate from, any powers which the body otherwise has²¹.

A joint scheme may be modified by the bodies participating in the scheme²². If, however, any such modifications:

- 2582 (i) in the opinion of the Secretary of State, substantially alter the nature or purposes of the scheme;

- 2583 (ii) alter the area within the United Kingdom to which the scheme applies;
- 2584 (iii) increase the maximum amount of money which may be distributed²³ in any year under the scheme;
- 2585 (iv) vary the proportions in which the money to be distributed²⁴ under the scheme is attributable to each of the bodies participating in the scheme; or
- 2586 (v) extend the duration of the scheme,

the scheme does not have effect with those modifications unless the Secretary of State makes an order²⁵ or, as the case may require, gives his approval²⁶ in relation to the scheme as so modified²⁷.

If, in the case of a joint scheme authorised by an order²⁸, the Secretary of State revokes the order, the scheme terminates on the date on which the revocation takes effect²⁹; and if, in the case of a joint scheme given written approval³⁰, the Secretary of State gives notice of withdrawal of his approval to each body participating in the scheme, the scheme terminates on the date on which the withdrawal of approval takes effect³¹. The Secretary of State may terminate a joint scheme in accordance with these provisions either of his own motion or on the application of one or more of the bodies participating in the scheme³².

In any case where an order made by the Secretary of State under his power to amend the statutory provision about distributing bodies³³ affects a body which, immediately before the order comes into force, is participating in a joint scheme, the Secretary of State may by order under that power make provision either amending³⁴ or revoking the joint scheme³⁵.

In any case where, on an application for a distribution of money³⁶, a decision under a joint scheme to make such a distribution has been notified to the applicant, but a relevant event³⁷ occurs before the whole of the distribution has been made, the Secretary of State may authorise³⁸ any of the bodies which were participating in the joint scheme immediately before the relevant event occurred to continue making distributions of money³⁹ in pursuance of the decision mentioned above as if the relevant event had not occurred⁴⁰.

The Secretary of State has made a number of orders authorising joint schemes under the above provisions⁴¹.

1 As to the meaning of 'distributes money' see PARA 722 note 2.

2 Ie under the National Lottery etc Act 1993 s 25(1); see PARA 722. A reference in the National Lottery etc Act 1993 to payment under s 25(1) includes a reference to payment under s 36C(3) (see PARA 732); see PARA 722 note 6.

3 National Lottery etc Act 1993 s 25B(1) (s 25B added by the National Lottery Act 1998 s 12(1)).

4 References in the National Lottery etc Act 1993 s 25B (however expressed) to distribution under s 25(1) of money for meeting expenditure are to be construed in accordance with s 25(5) (see PARA 722 note 4); s 25B(6) (added by the National Lottery (Funding of Endowments) Act 2003 s 1(1), (4)).

5 National Lottery etc Act 1993 s 25B(2) (as added: see note 3).

6 See note 2.

7 National Lottery etc Act 1993 s 25B(3) (as added: see note 3).

8 See note 2.

9 National Lottery etc Act 1993 s 25B(4) (as added: see note 3).

10 See note 2.

11 For these purposes, 'year' means any period of 12 months: National Lottery etc Act 1993 Sch 3A para 1 (Sch 3A added by the National Lottery Act 1998 s 12(3), Sch 3).

12 In determining for the purposes of the National Lottery etc Act 1993 Sch 3A the maximum amount of money which may be distributed under s 25(1) in any year under a joint scheme, any administrative expenses incurred in distributing such money under the scheme are to be brought into account: Sch 3A para 2(3) (as added: see note 11). The Secretary of State may by order amend Sch 3A para 2(1) so as to increase the amount for the time being specified therein: Sch 3A para 2(5) (as so added). See also note 13.

13 As to the Secretary of State see PARA 2. The functions of the Secretary of State under Sch 3A paras 2(1), (2), 7(1), (2) so far as they relate to a joint scheme (other than one in which the only participating bodies are the Arts Council of Wales and the Sports Council for Wales) the area of which includes all or any part of Wales are only exercisable with the agreement of the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 5, Sch 2. In so far as those functions relate to a joint scheme in which the only participating bodies are the Arts Council of Wales and the Sports Council for Wales, they are transferred to the Welsh Ministers: see art 2, Sch 1. As to the exercise of those functions in relation to Scotland see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, arts 2, 4, Schs 1, 3; and see also the National Lottery etc Act 1993 Sch 3A para 2(6) (added by SI 1999/1756).

14 National Lottery etc Act 1993 Sch 3A para 2(1) (as added: see note 11). The Secretary of State may only make an order authorising a joint scheme on an application made for the purpose by the bodies proposing to participate in the joint scheme: Sch 3A para 2(4)(a) (as so added). Where (1) a joint scheme is authorised by such an order; and (2) Sch 3A para 2(1) is amended by an order under Sch 3A para 2(5) (see note 12); and (3) the maximum amount of money which may be distributed under s 25(1) in any year under the scheme does not exceed the amount specified in Sch 3A para 2(1) as so amended, the scheme is to be treated for the purposes of Sch 3A as if the maximum amount of money which may be distributed under s 25(1) in any year under the scheme continued to exceed the amount for the time being specified in Sch 3A para 2(1): Sch 3A para 4 (as so added).

15 National Lottery etc Act 1993 Sch 3A para 2(2) (as added: see note 11). The Secretary of State may only give his approval under Sch 3A para 2(2) to a joint scheme on an application made for the purpose by the bodies proposing to participate in the joint scheme: Sch 3A para 2(4)(b) (as so added).

16 As to the meaning of 'United Kingdom' see PARA 16 note 8.

17 See note 2.

18 See note 2.

19 National Lottery etc Act 1993 Sch 3A para 3 (as added: see note 11).

20 Ie the powers conferred by the National Lottery etc Act 1993 s 25B, Sch 3A.

21 National Lottery etc Act 1993 Sch 3A para 5(2) (as added: see note 11).

22 National Lottery etc Act 1993 Sch 3A para 6(1) (as added: see note 11).

23 See note 2.

24 See note 2.

25 Ie under the National Lottery etc Act 1993 Sch 3A para 2(1): see the text and notes 12-14.

26 Ie under the National Lottery etc Act 1993 Sch 3A para 2(2): see the text and note 15.

27 See note 22. In determining for these purposes whether the case requires an order under the National Lottery etc Act 1993 Sch 3A para 2(1) or approval under Sch 3A para 2(2), Sch 3A para 4 (see note 14) is to be disregarded: National Lottery etc Act 1993 Sch 3A para 6(2) (as added: see note 11).

28 See note 25.

29 National Lottery etc Act 1993 Sch 3A para 7(1) (as added: see note 11).

30 See note 26.

31 National Lottery etc Act 1993 Sch 3A para 7(2) (as added: see note 11).

32 National Lottery etc Act 1993 Sch 3A para 7(3) (as added: see note 11).

33 Ie an order under the National Lottery etc Act 1993 s 29(1): see PARA 721.

34 The provision that may be made by virtue of National Lottery etc Act 1993 Sch 3A para 8(2)(a) (ie in an order amending the joint scheme) includes (1) provision varying the bodies participating in the joint scheme; (2) provision varying the proportions in which the money to be distributed under s 25(1) under the scheme is attributable to each of the bodies participating in the joint scheme; and (3) provision for all or any of the actual or contingent rights or liabilities of a body which are attributable to the joint scheme to become rights or liabilities of another body participating in the scheme as amended: National Lottery etc Act 1993 Sch 3A para 8(3) (as added: see note 11). No such provision may be made without the written agreement of the bodies which, if the provision were made, would be the participants in the joint scheme as amended: Sch 3A para 8(4) (as so added).

35 National Lottery etc Act 1993 Sch 3A para 8(1), (2) (as added: see note 11). Schedule 3A para 8 is without prejudice to s 60(5) (general power to make orders) or Sch 3A para 9 (see the text and notes 36-40): Sch 3A para 8(5) (as so added).

36 See note 2.

37 Is an event falling within the National Lottery etc Act 1993 Sch 3A para 9(2): see Sch 3A para 9(1)(b) (as added: see note 11). The events which fall within Sch 3A para 9(2) are: (1) that, by virtue of an order under s 29(1), any of the bodies participating in the scheme ceases to be specified in s 23(1), (2), (3) or (4) (as the case may be) (see PARA 721); (2) that the joint scheme terminates under Sch 3A para 7 (see the text and notes 28-32); or (3) that the joint scheme is revoked under Sch 3A para 8(2)(b) (see the text and note 35): Sch 3A para 9(2) (as so added).

38 Any such authorisation must be in writing: National Lottery etc Act 1993 Sch 3A para 9(7) (as added: see note 11).

39 See note 2.

40 See the National Lottery etc Act 1993 Sch 3A para 9(1), (3) (as added: see note 11). Where the Secretary of State gives such an authorisation in relation to any distributions of money under s 25(1), the other provisions of the 1993 Act have effect in relation to those distributions as if the relevant event had not occurred: Sch 3A para 9(4) (as so added). Such an authorisation accordingly extends to the defrayal of any administrative expenses incurred in making the distributions concerned: Sch 3A para 9(5) (as so added). Schedule 3A para 9 is without prejudice to s 60(5) (general power to make orders) or Sch 3A para 8 (see the text and notes 33-35): Sch 3A para 9(6) (as so added).

41 See (1) the Sport and Arts Joint Scheme (Authorisation) Order 2000, SI 2000/3320; (2) the Awards for All (England) Joint Scheme (Authorisation) Order 2005, SI 2005/374; (3) the Parks for People (England) Joint Scheme (Authorisation) Order 2005, SI 2005/3274; and (4) the Awards for All (England) Joint Scheme (Authorisation) Order 2007, SI 2007/696. See also the Transformational Grants Joint Scheme (Revocation) Order 2006, SI 2006/3146.

UPDATE

724 Joint schemes for distribution of money by distributing bodies

NOTE 41--SI 2005/3274 replaced: Parks for People (England) Joint Scheme (Authorisation) Order 2008, SI 2008/3103.

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725. Strategic plans for distributing bodies.

If the Secretary of State¹ instructs it do so, a body which distributes money² under the relevant statutory provision³ must, in accordance with the following provisions:

- 2587 (1) prepare and adopt a strategic plan; or
- 2588 (2) review and modify any strategic plan which it has adopted; or
- 2589 (3) replace any strategic plan which it has adopted by preparing and adopting another⁴.

For these purposes, 'strategic plan', in the case of any body, means a statement containing the body's policies for the distribution of the money likely to be available to it for distribution⁵ under the relevant statutory provision⁶. A strategic plan must also contain:

- 2590 (a) a statement of any directions given to the body by the Secretary of State or, in certain cases, by the Welsh Ministers⁷;
- 2591 (b) a statement of the estimate given to the body by the Secretary of State of the money likely to be available for distribution⁸ by the body;
- 2592 (c) a statement of the body's assessment of the needs which the body has power to deal with, in whole or in part, by distributing money⁹; and
- 2593 (d) a statement of the body's priorities in dealing with those needs by the distribution¹⁰ of money¹¹.

A strategic plan must be such as to demonstrate how the body is taking into account or, as the case may be, complying with the directions mentioned in head (a) above¹².

Before adopting a strategic plan, a body must:

- 2594 (i) consult such other bodies as it thinks fit for the purpose of identifying the needs mentioned in head (3) above and formulating the policies to be adopted for dealing with those needs;
- 2595 (ii) prepare a draft of the proposed plan;
- 2596 (iii) send a copy of the draft to the Secretary of State; and
- 2597 (iv) after consultation with the Secretary of State, make such modifications to the draft as it considers necessary or expedient¹³.

Where a body adopts a strategic plan, the body must send copies of the document containing the plan to the Secretary of State, and the Secretary of State must lay a copy of the document before each House of Parliament¹⁴.

1 As to the Secretary of State see PARA 2. In so far as they relate to the Arts Council of Wales and the Sports Council for Wales, the Secretary of State's functions under the National Lottery etc Act 1993 s 25C (see the text and notes 2-14) are, with the exception of his functions under s 25C(3)(b) (see head (b) in the text), transferred to the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the exercise of functions relating to Scotland see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, arts 2, 3, Schs 1, 2; and see also the National Lottery etc Act 1993 s 25D.

- 2 As to the meaning of 'distributes money' see PARA 722 note 2.
- 3 Ie under the National Lottery etc Act 1993 s 25(1): see PARA 722. A reference in the National Lottery etc Act 1993 to payment under s 25(1) includes a reference to payment under s 36C(3) (see PARA 732): see PARA 722 note 6.
- 4 National Lottery etc Act 1993 s 25C(1) (s 25C added by the National Lottery Act 1998 s 13).
- 5 See note 3.
- 6 National Lottery etc Act 1993 s 25C(2) (as added: see note 4).
- 7 Ie under the National Lottery etc Act 1993 s 26(1) (see PARA 726) or s 36E (see PARA 734). See also the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.
- 8 See note 3.
- 9 See note 3.
- 10 See note 3.
- 11 National Lottery etc Act 1993 s 25C(3) (as added (see note 4); amended by the National Lottery Act 2006 s 19(1), (2)).
- 12 National Lottery etc Act 1993 s 25C(4) (as added: see note 4).
- 13 National Lottery etc Act 1993 s 25C(5) (as added: see note 4).
- 14 National Lottery etc Act 1993 s 25C(6) (as added: see note 4). Certain reports must also be laid before the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

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726. Control by the Secretary of State.

A distributing body¹ must comply with any directions given to it by the Secretary of State² as to the matters to be taken into account in determining the persons to whom, the purposes for which and the conditions subject to which the body distributes³ any money⁴.

The trustees of the National Heritage Memorial Fund⁵ must comply with any directions given to them by the Secretary of State as to the matters to be taken into account in determining the purposes for which and the conditions subject to which they apply⁶ any money⁷.

A distributing body must comply with any directions that the Secretary of State considers it appropriate to give the body for securing the proper management and control of money paid to it⁸ from the National Lottery Distribution Fund⁹. Such directions may in particular require a body:

- 2598 (1) to obtain the consent of the Secretary of State before doing anything specified, or of a description specified, in the directions;
- 2599 (2) to provide the Secretary of State at times specified by him with such information as he may require¹⁰.

The above provisions do not, however, apply to the Big Lottery Fund¹¹.

The Secretary of State may by order prohibit a body from distributing money¹² to a person specified in the order if, at the time the order is made:

- 2600 (a) the person specified is a company¹³ of which the body, or a wholly-owned subsidiary¹⁴ of the body, is a member; or
- 2601 (b) the Secretary of State considers that the body is able (whether directly or indirectly) to control or materially to influence the policy of the person specified in carrying on any undertaking or performing any functions¹⁵.

A body must provide the Secretary of State with such information as he may require for the purpose of exercising his powers of prohibition under these provisions in relation to the body¹⁶.

Where money is allocated¹⁷ for a purpose and held for distribution¹⁸ by a body, the Secretary of State may by order provide for the money to be held for distribution by a different body specified in the order, without altering the purpose for which the money is allocated¹⁹. Before making such an order the Secretary of State must consult:

- 2602 (i) each body mentioned in the order;
- 2603 (ii) the Welsh Ministers;
- 2604 (iii) the Scottish Ministers;
- 2605 (iv) the Northern Ireland Department of Culture, Arts and Leisure; and
- 2606 (v) such other persons, if any, as he thinks appropriate²⁰.

In the exercise of this power, the Secretary of State has made an order reallocating certain sums²¹ held for distribution by a national sports distributor²² for distribution by the United Kingdom Sports Council²³.

1 As to the distributing bodies see PARA 721.

2 As to the Secretary of State see PARA 2. So far as it relates to the Arts Council of Wales and the Sports Council for Wales, the Secretary of State's function of giving such directions is transferred to the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. In certain other cases, the Secretary of State must exercise that function concurrently with the Welsh Ministers: see art 2, Sch 1. As to giving directions to bodies in or as regards Scotland see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, arts 2, 4, Schs 1, 3; and see also the National Lottery etc Act 1993 s 26A.

3 Ie under the National Lottery etc Act 1993 s 25(1): see PARA 721. A reference in the National Lottery etc Act 1993 to payment under s 25(1) includes a reference to payment under s 36C(3) (see PARA 732): see PARA 722 note 6.

4 National Lottery etc Act 1993 s 26(1). As to the giving of directions generally see PARA 7 note 27. The Secretary of State or the Welsh Ministers must consult a body before giving any directions to it under s 26: s 26(5).

5 As to the National Heritage Memorial Fund see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARAS 815-817.

6 Ie under the National Lottery etc Act 1993 s 25(4): see PARA 721.

7 National Lottery etc Act 1993 s 26(2).

8 Ie under National Lottery etc Act 1993 s 24: see PARA 721.

9 National Lottery etc Act 1993 s 26(3). As to the National Lottery Distribution Fund see PARA 713. So far as it relates to the Arts Council of Wales and the Sports Council for Wales, the Secretary of State's function of giving directions under s 26(3) may only be exercised with the agreement of the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 5, Sch 2.

10 National Lottery etc Act 1993 s 26(4).

11 National Lottery etc Act 1993 s 26(6) (added by the National Lottery Act 2006 s 19(1), (3)). As to directions to the Big Lottery Fund see PARA 734; and as to that fund see PARA 729.

12 See note 3. As to the meaning of 'distributing money' see PARA 722 note 2.

13 For these purposes, 'company' means a company formed and registered under the Companies Act 1985 or the corresponding Northern Ireland legislation, or a company to which the provisions of that Act or that corresponding legislation apply as they apply to a company so formed and registered: National Lottery etc Act 1993 s 27(3)(a).

14 For these purposes, 'wholly-owned subsidiary' has the meaning given by the Companies Act 1985 s 736 (see **COMPANIES** vol 14 (2009) PARA 25) or the corresponding Northern Ireland legislation: see the National Lottery etc Act 1993 s 27(3)(b). Note that the Companies Act 1985 s 736 is prospectively repealed by the Companies Act 2006 Sch 16, and replaced by s 1159, as from a day to be appointed under s 1300(2); at the date at which this volume states the law, no such day had been appointed.

15 National Lottery etc Act 1993 s 27(1), (2). For additional powers of prohibition relating to Northern Ireland see s 27(4)-(7). So far as they relate to the Arts Council of Wales and the Sports Council for Wales, the Secretary of State's functions under s 27 are transferred to the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

16 National Lottery etc Act 1993 s 27(8).

17 Ie under the National Lottery etc Act 1993 s 22(3): see PARA 713.

18 Ie under the National Lottery etc Act 1993 s 23: see PARA 721.

19 National Lottery etc Act 1993 s 29A(1), (2) (s 29A added by the National Lottery Act 2006 s 8(1)).

20 National Lottery etc Act 1993 s 29A(3) (as added: see note 19).

21 As to the sums in question see the Payments into the Olympic Lottery Distribution Fund etc Order 2008, SI 2008/255, arts 3(2), 4(2).

22 'National sports distributor' means any of the bodies mentioned in the National Lottery etc Act 1993 s 23(2)(a)-(d) (ie the English Sports Council, the Scottish Sports Council, the Sports Council for Wales and the Sports Council for Northern Ireland: see PARA 721): Olympic Lottery Distribution Fund etc Order 2008, SI 2008/255, art 1(2).

23 See the Payments into the Olympic Lottery Distribution Fund etc Order 2008, SI 2008/255, arts 3(1), 4(1).

UPDATE

726 Control by the Secretary of State

NOTE 13--Definition of 'company' amended: SI 2009/1941.

NOTE 14--Definition of 'wholly-owned subsidiary' amended: SI 2009/1941.

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727. Annual reports by distributing bodies.

As soon as possible after the end of every financial year¹, each body that in that year was paid any money out of the National Lottery Distribution Fund² or that distributed or applied any money³ under the relevant statutory provisions⁴ must make a report to the Secretary of State⁵ on the exercise during that year of its functions under the National Lottery etc Act 1993⁶. The report must set out any directions given to the body⁷ that had effect during the financial year to which the report relates⁸. It must also set out the body's policy and practice in relation to the principle that proceeds of the National Lottery⁹ should be used to fund projects, or aspects of projects, for which funds would be unlikely to be made available by a government department, the Scottish Ministers, a Northern Ireland department, or the Welsh Ministers¹⁰.

The Secretary of State must lay a copy of every such report received by him before Parliament¹¹.

1 'Financial year', in relation to a body, means (1) the period beginning with the date on which the body is established and ending with the next 31 March; and (2) each successive period of 12 months ending with 31 March: National Lottery etc Act 1993 s 44(1).

2 Ie under National Lottery etc Act 1993 s 24: see PARA 721. As to the National Lottery Distribution Fund see PARA 713.

3 As to the meaning of 'distribution of money' see PARA 722 note 2.

4 Ie under National Lottery etc Act 1993 s 25: see PARA 722.

5 As to the Secretary of State see PARA 2; and as to the exercise of his functions under the National Lottery etc Act 1993 s 34 with regard to Scotland see s 34(5), (6) (respectively added by SI 1999/1756; SI 1999/1750).

6 National Lottery etc Act 1993 s 34(1).

7 Ie under National Lottery etc Act 1993 s 26: see PARAS 723, 726.

8 National Lottery etc Act 1993 s 34(2). A report of the Big Lottery Fund under s 34 must set out any directions given to the Fund under s 36E(1) (see PARA 734) that had effect during the financial year to which the report relates: s 36E(9) (added by the National Lottery Act 2006 s 15(2)). As to the Big Lottery Fund see PARA 729.

9 As to the National Lottery see PARA 687.

10 National Lottery etc Act 1993 s 34(2A) (added by the National Lottery Act 2006 s 12).

11 National Lottery etc Act 1993 s 34(3). Certain reports must also be laid before the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

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728. Accounts of distributing bodies other than the Big Lottery Fund.

With the exception of the Big Lottery Fund¹, in respect of which special provision is made², a distributing body³ must keep proper accounts in respect of any money paid to it out of the National Lottery Distribution Fund⁴ and proper records in relation to the accounts⁵. Such a body must prepare a statement of accounts in respect of each financial year⁶ in which it was paid any money⁷ or distributed or applied⁸ any money⁹. The statement must comply with any directions that may be given by the Secretary of State¹⁰ as to the information to be contained in such a statement, the manner in which such information is to be presented or the methods and principles according to which such a statement is to be prepared¹¹. Copies of the statement must be sent to the Secretary of State and the Comptroller and Auditor General within such period after the end of the financial year to which the statement relates as the Secretary of State may direct¹². The Comptroller and Auditor General must examine, certify and report on the statement and must lay copies of the statement and of his report before Parliament¹³.

1 As to the Big Lottery Fund see PARA 729; and as to accounts of that fund see PARA 730.

2 See the National Lottery etc Act 1993 s 35(7) (amended by the National Lottery Act 2006 s 19(1), (5)(a)).

3 As to the distributing bodies see PARA 721.

4 I.e. paid to it under the National Lottery etc Act 1993 s 24: see PARA 721. As to the National Lottery Distribution Fund see PARA 713.

5 National Lottery etc Act 1993 s 35(1).

6 As to the meaning of 'financial year' see PARA 727 note 1.

7 I.e. under the National Lottery etc Act 1993 s 24: see PARA 721.

8 I.e. under the National Lottery etc Act 1993 s 25: see PARA 722. As to the meaning of 'distributed money' see PARA 722 note 2.

9 National Lottery etc Act 1993 s 35(2).

10 As to the Secretary of State see PARA 2. So far as it relates to the Arts Council of Wales and the Sports Council for Wales, the Secretary of State's function of giving such directions may only be exercised with the agreement of the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 5, Sch 2. As to the exercise of that function in relation to Scotland see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, arts 2, 3, Schs 1, 2; and see also the National Lottery etc Act 1993 s 35(8) (added by SI 1999/1756).

11 National Lottery etc Act 1993 s 35(3). The Secretary of State may not give such a direction without the Treasury's approval: s 35(6). As to directions generally see PARA 7 note 27.

12 National Lottery etc Act 1993 s 35(4).

13 National Lottery etc Act 1993 s 35(5). Certain documents must also be laid before the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

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B. THE BIG LOTTERY FUND

729. Establishment, constitution and proceedings of the Big Lottery Fund.

There is a body corporate known as the Big Lottery Fund ('the Fund')¹. Money that immediately before 1 December 2006² was held in the National Lottery Distribution Fund ('the distribution fund')³ for distribution by an old lottery distributor⁴ was on that day treated as allocated for prescribed expenditure⁵ and held in the distribution fund for distribution⁶ by the Big Lottery Fund⁷. Money transferred⁸ to the Big Lottery Fund having been paid out of the distribution fund⁹ to an old lottery distributor is treated as having been paid out of the distribution fund to the Fund¹⁰.

The Big Lottery Fund must consist of 12 members appointed by the Secretary of State¹¹ and he must appoint one of the members as chairman¹². The Secretary of State must ensure that at any time:

- 2607 (1) one of the members is appointed to represent the interests of England¹³;
- 2608 (2) one of the members is appointed, with the agreement of the Welsh Ministers, to represent the interests of Wales¹⁴;
- 2609 (3) one of the members is appointed, with the agreement of the Scottish Ministers, to represent the interests of Scotland¹⁵; and
- 2610 (4) one of the members is appointed, with the agreement of the Northern Ireland Department of Culture, Arts and Leisure, to represent the interests of Northern Ireland¹⁶.

In complying with heads (1) to (4) above, the Secretary of State may not appoint a member for the purpose of satisfying more than one of those heads¹⁷. He may, however, appoint the chairman for the purpose of satisfying one of those heads¹⁸.

A person holds and vacates office as chairman or other member of the Big Lottery Fund in accordance with the terms of his appointment and subject to the relevant¹⁹ statutory provisions²⁰. The chairman and a member in receipt of remuneration are disqualified for membership of the House of Commons or the Northern Ireland Assembly²¹. The chairman or another member may resign his office by notice in writing to the Secretary of State²² and may be removed from office by the Secretary of State on the grounds that:

- 2611 (a) a bankruptcy order has been made against him, his estate has been sequestrated or he has made a composition or arrangement with, or granted a trust deed for, his creditors; or
- 2612 (b) he is, in the opinion of the Secretary of State, unable, unfit or unwilling to discharge the functions of his office²³.

Before exercising that power of removal in respect of a person appointed for the purpose of satisfying head (2), head (3) or head (4) above, the Secretary of State must consult the Welsh Ministers, the Scottish Ministers, or the Northern Ireland Department of Culture, Arts and

Leisure, as the case may require²⁴. A person who ceases, otherwise than by virtue of such removal, to be chairman or another member may be re-appointed²⁵.

The Big Lottery Fund may appoint staff, subject to any relevant directions²⁶ given by the Secretary of State²⁷. It must establish:

- 2613 (i) a committee, chaired by the member appointed under head (1) above, for the purpose of exercising the Fund's functions in relation to English devolved expenditure²⁸;
- 2614 (ii) a committee, chaired by the member appointed under head (2) above, for the purpose of exercising the Fund's functions in relation to Welsh devolved expenditure;
- 2615 (iii) a committee, chaired by the member appointed under head (3) above, for the purpose of exercising the Fund's functions in relation to Scottish devolved expenditure; and
- 2616 (iv) a committee, chaired by the member appointed under head (4) above, for the purpose of exercising the Fund's functions in relation to Northern Ireland devolved expenditure²⁹.

Before appointing the members of such a committee the Fund must obtain the consent of the Secretary of State, the Welsh Ministers, the Scottish Ministers or the Northern Ireland Department of Culture, Arts and Leisure, as the case may require³⁰. Such a committee must carry on its activities under such name as the committee may determine with the consent of the Secretary of State and, in the case of the committee concerned with Wales, Scotland or Northern Ireland, with the consent of the Welsh Ministers, the Scottish Ministers or the Northern Ireland Department of Culture, Arts and Leisure, as the case may require³¹. Nothing in the above provisions, however, or in the statutory provision concerned with delegation to committees³², prevents the Fund from establishing a committee otherwise than in accordance with either of those provisions or from authorising a committee, whether or not established in accordance with either of those provisions, to exercise a function of the Fund³³.

The Big Lottery Fund is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown³⁴. It is subject to investigation by the Parliamentary Commissioner for Administration³⁵. The Fund may³⁶ regulate its procedure and the procedure of its committees and may, in particular, make provision for a quorum³⁷. Its records are public records³⁸. The validity of proceedings of the Fund or a committee is not affected by a vacancy among its members, or a defect in the appointment of a person as chairman or member³⁹.

1 National Lottery etc Act 1993 s 36A(1) (added by the National Lottery Act 2006 s 14(1)).

2 I.e the 'appointed day' for the purposes of the National Lottery Act 2006 s 16(1) (see PARA 686): see the National Lottery Act 2006 s 18(3).

3 As to the National Lottery Distribution Fund see PARA 713.

4 For these purposes, 'old lottery distributor' means a body dissolved by the National Lottery Act 2006 s 16 (ie the National Lottery Charities Board, the Millennium Commission and the New Opportunities Fund: see PARA 686): National Lottery Act 2006 s 18(3).

5 I.e allocated under the National Lottery etc Act 1993 22(3)(d): see PARA 713.

6 I.e in accordance with the National Lottery etc Act 1993 s 23(4): see PARA 721.

7 National Lottery Act 2006 s 18(1).

8 I.e under the National Lottery Act 2006 s 17(2): see PARA 686.

- 9 le paid under the National Lottery etc Act 1993 s 24: see PARA 721.
- 10 National Lottery Act 2006 s 18(2).
- 11 National Lottery etc Act 1993 Sch 4A para 1(1) (Sch 4A added by the National Lottery Act 2006 Sch 2). The Secretary of State may by order vary the number specified in the National Lottery etc Act 1993 Sch 4A para 1(1): Sch 4A para 1(5) (as so added). Before making such an order the Secretary of State must consult (1) the Welsh Ministers; (2) the Scottish Ministers; and (3) the Northern Ireland Department of Culture, Arts and Leisure: Sch 4A para 1(6) (as so added). As to the Secretary of State see PARA 2.
- 12 National Lottery etc Act 1993 Sch 4A para 1(2) (as added: see note 11).
- 13 National Lottery etc Act 1993 Sch 4A para 1(3)(a) (as added: see note 11).
- 14 National Lottery etc Act 1993 Sch 4A para 1(3)(b), (4)(c) (as added: see note 11).
- 15 National Lottery etc Act 1993 Sch 4A para 1(3)(c), (4)(d) (as added: see note 11).
- 16 National Lottery etc Act 1993 Sch 4A para 1(3)(d), (4)(e) (as added: see note 11).
- 17 National Lottery etc Act 1993 Sch 4A para 1(4)(a) (as added: see note 11).
- 18 National Lottery etc Act 1993 Sch 4A para 1(4)(b) (as added: see note 11).
- 19 le subject to the National Lottery etc Act 1993 Sch 4A.
- 20 National Lottery etc Act 1993 Sch 4A para 2 (as added: see note 11).
- 21 See the National Lottery etc Act 1993 Sch 4A paras 12, 13 (as added: see note 11).
- 22 National Lottery etc Act 1993 Sch 4A para 3 (as added: see note 11).
- 23 National Lottery etc Act 1993 Sch 4A para 4(1) (as added: see note 11).
- 24 See the National Lottery etc Act 1993 Sch 4A para 4(2) (as added: see note 11).
- 25 National Lottery etc Act 1993 Sch 4A para 5 (as added: see note 11).
- 26 le any directions under the National Lottery etc Act 1993 s 36E(3)(b): see PARA 734.
- 27 National Lottery etc Act 1993 Sch 4A para 6 (as added: see note 11).
- 28 As to the meaning of 'devolved expenditure' see PARA 721.
- 29 National Lottery etc Act 1993 Sch 4A para 7(1) (as added: see note 11). Section 25A(7) (see PARA 723) applies in relation to any committee of the Fund as it applies in relation to a committee established under s 25A(6) (see PARA 723): Sch 4A para 9 (as so added).
- 30 See the National Lottery etc Act 1993 Sch 4A para 7(2) (as added: see note 11).
- 31 See the National Lottery etc Act 1993 Sch 4A para 7(3) (as added: see note 11).
- 32 le the National Lottery etc Act 1993 s 25A(6): see PARA 723.
- 33 National Lottery etc Act 1993 Sch 4A para 8 (as added: see note 11).
- 34 National Lottery etc Act 1993 Sch 4A para 10 (as added: see note 11).
- 35 See the National Lottery etc Act 1993 Sch 4A para 11 (as added: see note 11).
- 36 See note 19.
- 37 National Lottery etc Act 1993 Sch 4A para 14 (as added: see note 11).
- 38 See the National Lottery etc Act 1993 Sch 4A para 15 (as added: see note 11).
- 39 National Lottery etc Act 1993 Sch 4A para 16 (as added: see note 11).

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730. Finances of the Big Lottery Fund.

The Big Lottery Fund ('the Fund')¹ may pay to the chairman, to another member or to a member of a committee such remuneration as the Secretary of State² may determine, and such travelling and other allowances as the Secretary of State may determine³. The Fund may also pay to or in respect of the chairman or another member such sums as the Secretary of State may determine by way of, or in respect of, pensions, allowances or gratuities⁴. If the Secretary of State thinks that there are special circumstances that make it right for a person ceasing to hold office as chairman or member to receive compensation, the Fund may pay him such compensation as the Secretary of State may determine⁵.

The Fund may, subject to any relevant directions⁶, pay sums to or in respect of a member or former member of staff by way of or in respect of remuneration, allowances, pensions, gratuities, or compensation for loss of employment⁷. A superannuation scheme under the Superannuation Act 1972 may extend to the Fund⁸.

The Fund may make payments in respect of expenditure, which may include expenditure of a capital nature, of the Fund, or of a person to whom it delegates⁹ a function¹⁰.

The Fund may deposit money in an interest-bearing account, but may not otherwise invest¹¹. The proceeds of money received by the Fund and so invested are to be treated for the statutory purposes¹² as part of that money¹³.

The Fund must keep proper accounting records, and prepare a statement of accounts in respect of each financial year¹⁴; and must send a copy of such a statement to the Secretary of State, to the Welsh Ministers, to the Scottish Ministers, to the Northern Ireland Department of Culture, Arts and Leisure, and to the Comptroller and Auditor General¹⁵, within such period, beginning with the end of the financial year to which the statement relates, as the Secretary of State may, with the consent of the Treasury, direct¹⁶. The Comptroller and Auditor General must examine, certify and report on a statement so received and must lay a copy of the statement and his report before Parliament¹⁷.

1 As to the Big Lottery Fund see PARA 729.

2 As to the Secretary of State see PARA 2.

3 National Lottery etc Act 1993 Sch 4A para 17(1) (Sch 4A added by the National Lottery Act 2006 Sch 2).

4 National Lottery etc Act 1993 Sch 4A para 17(2) (as added: see note 3).

5 National Lottery etc Act 1993 Sch 4A para 17(3) (as added: see note 3).

6 Ie any directions under the National Lottery etc Act 1993 s 36E(3)(b): see PARA 734.

7 National Lottery etc Act 1993 Sch 4A para 18(1) (as added: see note 3).

8 See the National Lottery etc Act 1993 Sch 4A para 18(2) (as added: see note 3).

9 Ie under the National Lottery etc Act 1993 s 25A(1): see PARA 723.

10 National Lottery etc Act 1993 Sch 4A para 19 (as added: see note 3).

- 11 National Lottery etc Act 1993 Sch 4A para 20(1) (as added: see note 3).
- 12 le for the purposes of the National Lottery etc Act 1993 Pt II (ss 21-44, Schs 3A-4A).
- 13 National Lottery etc Act 1993 Sch 4A para 20(2) (as added: see note 3).
- 14 National Lottery etc Act 1993 Sch 4A para 21(1) (as added: see note 3). As to the meaning of 'financial year' see PARA 727 note 1.
- 15 National Lottery etc Act 1993 Sch 4A para 21(2) (as added: see note 3).
- 16 See the National Lottery etc Act 1993 Sch 4A para 21(3) (as added: see note 3).
- 17 National Lottery etc Act 1993 Sch 4A para 21(4) (as added: see note 3).

UPDATE

730 Finances of the Big Lottery Fund

TEXT AND NOTE 14--The accounting records referred to are those relating to the exercise of the Fund's functions under the National Lottery etc Act 1993 and the statement of accounts is that relating to the exercise of those functions: National Lottery etc Act 1993 Sch 4A para 21(1) (amended by Dormant Bank and Building Society Accounts Act 2008 Sch 3 para 11).

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731. Power to distribute funds.

The Big Lottery Fund ('the Fund')¹ may make grants or loans, or make or enter into other arrangements, for the purpose of complying with its statutory duty² to distribute any money paid to it out of the National Lottery Distribution Fund³ for meeting expenditure of the relevant description⁴. A grant or loan may be subject to conditions, which may, in particular, include conditions as to repayment with interest⁵. The Secretary of State⁶ may, however, by order make provision limiting the amounts so distributed⁷. Such an order may in particular:

- 2617 (1) specify a maximum amount that may be distributed during a specified period for expenditure of a prescribed⁸ description⁹;
- 2618 (2) specify a minimum amount that must be distributed during a specified period for expenditure of a prescribed description¹⁰;
- 2619 (3) make provision by reference to the aggregate of amounts distributed, to a percentage of amounts available for distribution or otherwise¹¹;
- 2620 (4) make provision, which may, in particular, confer a power on the Fund, for the treatment of expenditure which satisfies more than one prescribed description¹².

Before making such an order the Secretary of State must consult the Fund, the Welsh Ministers, the Scottish Ministers, the Northern Ireland Department of Culture, Arts and Leisure, and such other persons, if any, as he thinks appropriate¹³.

1 As to the Big Lottery Fund see PARA 729.

2 I.e. under the National Lottery etc Act 1993 s 25(1); see PARA 722. A reference in the National Lottery etc Act 1993 to payment under s 25(1) includes a reference to payment under s 36C(3) (see PARA 732); see PARA 722 note 6.

3 I.e. paid to it out of the National Lottery etc Act 1993 s 24; see PARA 721. As to National Lottery Distribution Fund see PARA 713.

4 See the National Lottery etc Act 1993 s 36B(1) (s 36B added by the National Lottery Act 2006 s 15(2)). The relevant description of expenditure referred to in the text is expenditure mentioned in the National Lottery etc Act 1993 s 22(3) (see PARA 713); see s 25(1); and PARA 722.

5 National Lottery etc Act 1993 s 36B(2) (as added: see note 4).

6 As to the Secretary of State see PARA 2.

7 National Lottery etc Act 1993 s 36B(3) (as added: see note 4).

8 I.e. a description prescribed under the National Lottery etc Act 1993 s 22(3A); see PARA 713.

9 National Lottery etc Act 1993 s 36B(4)(a) (as added: see note 4). The maximum amount that might be distributed by the Fund before 1 April 2008 under s 36B(1) for expenditure on or connected with projects which are intended to transform communities, regions or the nation as a whole was £140 million: see the Big Lottery Fund (Prescribed Expenditure) Order 2006, SI 2006/3202, art 4(2), (3).

10 National Lottery etc Act 1993 s 36B(4)(b) (as added: see note 4).

11 National Lottery etc Act 1993 s 36B(4)(c) (as added: see note 4).

12 National Lottery etc Act 1993 s 36B(4)(d) (as added: see note 4).

13 National Lottery etc Act 1993 s 36B(5) (as added: see note 4).

UPDATE

731 Power to distribute funds

TEXT AND NOTES--As to the distribution of money transferred from dormant bank and building society accounts for use for social and environmental purposes see Dormant Bank and Building Society Accounts Act 2008 Pt 2 (ss 16-27); and PARA 731A. As to the transfer of such money to authorised reclaim funds and charities see Dormant Bank and Building Society Accounts Act 2008 Pt 1 (ss 1-15); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 590A.

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731A. Distribution of dormant bank and building society account money.

Subject to the following provisions, the Big Lottery Fund ('the Fund') (see PARA 729) must distribute dormant account money for meeting expenditure that has a social or environmental purpose: Dormant Bank and Building Society Accounts Act 2008 s 16(1). 'Dormant account money' means money transferred to the Fund by a reclaim fund (see (**FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 590A) in pursuance of the object mentioned in Dormant Bank and Building Society Accounts Act 2008 s 5(1)(c) (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 590A), and also includes the proceeds of such money invested under National Lottery etc Act 1993 Sch 4A para 20(1) (see PARA 730) or Dormant Bank and Building Society Accounts Act 2008 s 25(1): Dormant Bank and Building Society Accounts Act 2008 s 16(2). The Fund may make grants or loans, or make or enter into other arrangements, for the purpose of complying with the requirement to distribute dormant account money: Dormant Bank and Building Society Accounts Act 2008 s 16(3). A grant or loan may be subject to conditions which may, in particular, include conditions as to repayment with interest: Dormant Bank and Building Society Accounts Act 2008 s 16(4). Distribution of money includes making or entering into arrangements in accordance with s 16(3): Dormant Bank and Building Society Accounts Act 2008 s 27(2). Distributing money for meeting expenditure of a particular description includes distributing money for the purpose of establishing, or contributing to, endowments (including permanent endowments) in connection with expenditure of that description: Dormant Bank and Building Society Accounts Act 2008 s 16(5). As to further provisions regarding the functions of the Fund in relation to dormant account money see Dormant Bank and Building Society Accounts Act 2008 s 16(6), Sch 3. As to the apportionment of dormant account money, see Dormant Bank and Building Society Accounts Act 2008 s 17.

A distribution of dormant account money for meeting English expenditure must be (1) made for meeting expenditure on or connected with the provision of services, facilities or opportunities to meet the needs of young people; (2) made for meeting expenditure on or connected with (a) the development of individuals' ability to manage their finances, or (b) the improvement of access to personal financial services; or (3) made to a social investment wholesaler: Dormant Bank and Building Society Accounts Act 2008 s 18(1). 'Social investment wholesaler' means a body that exists to assist or enable other bodies to give financial or other support to third sector organisations, and 'third sector organisation' means an organisation that exists wholly or mainly to provide benefits for society or the environment: Dormant Bank and Building Society Accounts Act 2008 s 18(2). The Welsh Ministers may by order made by statutory instrument make provision restricting the purposes for which, or the kinds of person to which, a distribution of dormant account money for meeting Welsh expenditure may be made: Dormant Bank and Building Society Accounts Act 2008 s 19(1). Before making such an order the Welsh Ministers must consult the Fund and such other persons (if any) as they think appropriate: Dormant Bank and Building Society Accounts Act 2008 s 19(2). An order may not be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the National Assembly for Wales: Dormant Bank and Building Society Accounts Act 2008 s 19(3).

The Fund may be required to comply with specified directions: see Dormant Bank and Building Society Accounts Act 2008 s 22. A direction under the 2008 Act must be given in writing and may be varied or revoked by a subsequent direction: Dormant Bank and Building Society

Accounts Act 2008 s 29. The Secretary of State may by order prohibit the Fund from distributing dormant account money to a person specified in the order if he considers that the Fund is able, whether directly or indirectly, to control or materially to influence the policy of that person in carrying on any undertaking or performing any functions: see Dormant Bank and Building Society Accounts Act 2008 s 23. A power of the Treasury or the Secretary of State to make an order under the 2008 Act is exercisable by statutory instrument: Dormant Bank and Building Society Accounts Act 2008 s 28. The Secretary of State also has power to add or remove distributors: see Dormant Bank and Building Society Accounts Act 2008 s 24. The Fund may enter into arrangements with a body or person, including a reclaim fund, for money that may be or has been paid to the Fund to be held or invested, on its behalf, by that body or person: see Dormant Bank and Building Society Accounts Act 2008 s 25. The Fund may defray out of dormant account money any expenses incurred by it in consequence of the 2008 Act: see Dormant Bank and Building Society Accounts Act 2008 s 26.

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732. Non-lottery funds.

The Big Lottery Fund ('the Fund')¹ may enter into an arrangement with a person under which the person pays money to the Fund, and the Fund distributes the money² to a third party³. Such an arrangement may, in particular identify the third party, or otherwise limit the Fund's freedom of action in relation to the distribution of the money paid under the arrangement⁴.

The Fund must distribute money so received⁵ for meeting expenditure that is charitable⁶, connected with health⁷, connected with education⁸ or connected with the environment⁹.

1 As to the Big Lottery Fund see PARA 729.

2 As to the meaning of 'distributes money' see PARA 722 note 2.

3 National Lottery etc Act 1993 s 36C(1) (s 36C added by the National Lottery Act 2006 s 15(2)).

4 National Lottery etc Act 1993 s 36C(2) (as added: see note 3).

5 The reference in the text to the distribution of money received under the National Lottery etc Act 1993 s 36C(1) is a reference to doing anything of a kind that the Fund can do under s 36B (see PARA 731): s 36C(4) (as added: see note 3).

6 As to the meaning of 'charitable' see PARA 713 note 12.

7 As to projects connected with health see PARA 713 note 13.

8 As to the meaning of 'education' see PARA 713 note 14; and as to projects connected with education see PARA 713 note 13.

9 National Lottery etc Act 1993 s 36C(3) (as added: see note 3). As to the meaning of 'the environment' see PARA 713 note 15; and as to projects connected with the environment see PARA 713 note 13.

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733. Power to give advice.

The Big Lottery Fund¹ may give advice about the distribution of money² under any provision of the National Lottery etc Act 1993³. It may also give advice about inviting, making or considering applications for grants and loans under any provision of that Act⁴ and about the use of money paid under any provision of that Act⁵.

1 As to the Big Lottery Fund see PARA 729.

2 As to the meaning of 'distribution of money' see PARA 722 note 2.

3 National Lottery etc Act 1993 s 36D(a) (s 36D added by the National Lottery Act 2006 s 15(2)).

4 National Lottery etc Act 1993 s 36D(b) (as added: see note 3).

5 National Lottery etc Act 1993 s 36D(c) (as added: see note 3).

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734. Control by the Secretary of State etc.

Subject to the provision for directions with regard to devolved expenditure¹, the Big Lottery Fund ('the Fund')² must, in exercising any of its functions, comply with any direction given to it by the Secretary of State³. A direction under these provisions:

- 2621 (1) may, in particular, specify matters to be taken into account in determining the persons to whom, the purposes for which and the conditions subject to which the Fund distributes money⁴;
- 2622 (2) may, in particular:
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314. (a) relate to the management and control of money received by the Fund;
315. (b) relate to the employment of staff;
316. (c) with the consent of the Treasury, relate to the form of accounts, or methods and principles for the preparation of accounts;
317. (d) in so far as it relates to a matter specified in heads (a) to (c) above, relate to the persons to whom or the terms on which the Fund delegates functions, require the Fund to obtain the Secretary of State's consent before taking action of a specified kind and require the Fund to provide information to the Secretary of State⁵.
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Such a direction, other than a direction given by virtue only of head (2) above, may not be given by the Secretary of State in relation to Welsh, Scottish or Northern Ireland devolved expenditure⁶, but may instead be given by the Welsh Ministers, the Scottish Ministers or the Northern Ireland Department of Culture, Arts and Leisure, as the case may require⁷.

Before giving any such direction, the Secretary of State must consult the Fund⁸. Except where the direction is given only by virtue of head (2) above, or relates only to English devolved expenditure, he must also consult the Welsh Ministers, the Scottish Ministers and the Northern Ireland Department of Culture, Arts and Leisure⁹.

Before giving a direction by virtue of the provision for directions with regard to devolved expenditure¹⁰, the person giving the direction must consult the Fund and must also obtain the consent of the Secretary of State¹¹.

An annual report of the Fund¹² must set out any directions given to it under the above provisions that had effect during the financial year¹³ to which the report relates¹⁴.

1 le subject to the National Lottery etc Act 1993 s 36E(4): see the text and notes 6-7.

2 As to the Big Lottery Fund see PARA 729.

3 National Lottery etc Act 1993 s 36E(1) (s 36E added by the National Lottery Act 2006 s 15(2)). As to the Secretary of State see PARA 2.

4 National Lottery etc Act 1993 s 36E(2) (as added: see note 3). As to the meaning of 'distributes money' see PARA 722 note 2.

- 5 National Lottery etc Act 1993 s 36E(3) (as added: see note 3).
- 6 As to the meaning of 'devolved expenditure' see PARA 713 note 18.
- 7 See the National Lottery etc Act 1993 s 36E(4) (as added: see note 3).
- 8 National Lottery etc Act 1993 s 36E(5)(a), (7) (as added: see note 3).
- 9 National Lottery etc Act 1993 s 36E(5)(b)-(d), (6) (as added: see note 3).
- 10 le by virtue of the National Lottery etc Act 1993 s 36E(4): see the text and notes 6-7.
- 11 National Lottery etc Act 1993 s 36E(8) (as added: see note 3).
- 12 le a report under the National Lottery etc Act 1993 s 34: see PARA 727.
- 13 As to the meaning of 'financial year' see PARA 727 note 1.
- 14 National Lottery etc Act 1993 s 36E(9) (as added: see note 3).

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C. THE OLYMPIC LOTTERY DISTRIBUTOR

735. Establishment, constitution and proceedings of the Olympic Lottery Distributor.

There is a body corporate known as the Olympic Lottery Distributor ('the Distributor')¹. The Secretary of State² or the Paymaster General must appoint the members of the Distributor and appoint one of the members as chairman³, and must aim to ensure that the Distributor has at least five members at any time⁴. Before making such an appointment the Secretary of State or the Paymaster General must consult the Mayor of London and the National Olympic Committee of the United Kingdom⁵.

A person holds and vacates office as chairman or other member of the Distributor in accordance with the terms of his appointment and subject to the relevant⁶ statutory provisions⁷. Neither the Secretary of State nor the Paymaster General may appoint a person to hold office as chairman or other member of the Distributor for a term of more than five years⁸. The chairman and a member in receipt of remuneration are disqualified for membership of the House of Commons or the Northern Ireland Assembly⁹. The chairman or another member of the Distributor may resign his office by notice in writing to the Secretary of State or the Paymaster General¹⁰ and may be removed from office by the Secretary of State or the Paymaster General on the grounds that:

- 2623 (1) a bankruptcy order has been made against him, his estate has been sequestrated or he has made a composition or arrangement with, or granted a trust deed for, his creditors; or
- 2624 (2) he is, in the opinion of the Secretary of State or the Paymaster General, unable, unfit or unwilling to discharge the functions of his office¹¹.

A person who ceases, otherwise than by virtue of such removal, to be chairman or another member of the Distributor may be re-appointed¹².

The Distributor may appoint staff¹³ and may establish a committee¹⁴. A committee must include a member or employee of the Distributor, but may also include persons who are neither members nor employees of the Distributor¹⁵.

The Distributor is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown¹⁶. It is subject to investigation by the Parliamentary Commissioner for Administration¹⁷ and its records are public records¹⁸. The Distributor may delegate a function to a member, an employee, a committee or any other person¹⁹.

In exercising its functions the Distributor must comply with any direction given to it by the Secretary of State or the Paymaster General²⁰. Such a direction may, in particular:

- 2625 (a) relate to the management and control of money received by the Distributor;
- 2626 (b) relate to the terms and conditions on which grants or loans are made by it²¹;

- 2627 (c) require the Distributor to obtain the Secretary of State's or the Paymaster General's consent before taking action of a specified kind;
- 2628 (d) require the Distributor to provide information;
- 2629 (e) relate to the employment of staff; or
- 2630 (f) with the consent of the Treasury, relate to the form of accounts or methods and principles for the preparation of accounts²².

Before giving such a direction, the Secretary of State or the Paymaster General must consult the Distributor²³.

Subject to the relevant statutory provisions²⁴, the Distributor may regulate its own procedure and that of its committees and in particular may specify a quorum for meetings²⁵.

As soon as is reasonably practicable after the end of each financial year²⁶ the Distributor must send to the Secretary of State or the Paymaster General a report on the exercise of the Distributor's functions during the year²⁷. Such a report must, in particular, specify any directions given to the Distributor²⁸ that had effect during the financial year to which the report relates²⁹. The Secretary of State or the Paymaster General must lay before Parliament a copy of each report so received³⁰.

The validity of proceedings of the Distributor is not affected by a vacancy among its members or a defect in the appointment of a person as chairman or member³¹.

1 Horserace Betting and Olympic Lottery Act 2004 s 29(1).

2 As to the Secretary of State see PARA 2.

3 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 1(1) (Sch 5 paras 1, 3, 4, 5, 14, 17 amended by SI 2007/2129).

4 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 1(2) (as amended: see note 3).

5 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 1(3) (as amended: see note 3); and see s 33(1)(b).

6 le subject to the Horserace Betting and Olympic Lottery Act 2004 Sch 5.

7 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 2.

8 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 3 (as amended: see note 3).

9 See the Horserace Betting and Olympic Lottery Act 2004 Sch 5 paras 11, 12.

10 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 4 (as amended: see note 3).

11 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 5 (as amended: see note 3).

12 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 6.

13 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 7.

14 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 8(1).

15 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 8(2).

16 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 9.

17 See the Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 10.

18 See the Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 16.

19 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 13(1). The following provisions of the National Lottery etc Act 1993 s 25A (delegation: see PARA 723) apply, with any necessary modifications, for

these purposes as they apply for the purposes of s 25A, ie s 25A(4) (power to accept delegation); s 25A(5)-(7) (sub-delegation); and s 25A(8)-(11) (general): Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 13(2).

20 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 14(1) (as amended: see note 3).

21 Ie under the Horserace Betting and Olympic Lottery Act 2004 s 30: see PARA 737.

22 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 14(2) (as amended: see note 3).

23 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 14(3) (as amended: see note 3).

24 See note 6.

25 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 15.

26 The financial year of the Distributor is the period of 12 months ending with 31 March: Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 26(1). Its first financial year, however, was the period beginning with 8 July 2005 and ending with 31 March 2006: Sch 5 para 26(2).

27 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 17(1) (as amended: see note 3).

28 Ie under the Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 14: see the text and notes 20-23.

29 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 17(2).

30 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 17(3) (as amended: see note 3).

31 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 18.

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736. Finances of the Olympic Lottery Distributor.

The Olympic Lottery Distributor ('the Distributor')¹ may pay to the chairman, another member or a member of a committee such remuneration as the Secretary of State² or the Paymaster General may determine, and such travelling and other allowances as the Secretary of State or the Paymaster General may determine³. The Distributor may also pay to or in respect of the chairman or another member such sums as the Secretary of State or the Paymaster General may determine by way of, or in respect of, pensions, allowances or gratuities⁴. If the Secretary of State or the Paymaster General thinks that there are special circumstances that make it right for a person ceasing to hold office as chairman or member of the Distributor to receive compensation, the Distributor may pay to him such compensation as the Secretary of State or the Paymaster General may determine⁵.

The Distributor may pay sums to or in respect of a member or former member of staff by way of or in respect of remuneration, allowances, pensions, gratuities or compensation for loss of employment⁶. A superannuation scheme under the Superannuation Act 1972 may extend to the Distributor⁷.

The Distributor may make payments in respect of expenditure, which may include expenditure of a capital nature, by the Distributor or by a person to whom it delegates⁸ functions⁹. It may deposit money in an interest-bearing account but may not otherwise invest¹⁰.

The Secretary of State or the Paymaster General may pay money to the Distributor for the purpose of enabling it to meet expenditure¹¹. Such a payment:

- 2631 (1) may not be used to make grants or loans¹²;
- 2632 (2) may be made only where the Secretary of State or the Paymaster General thinks the Distributor's income is or is likely to be insufficient to meet the expenditure to which the payment relates; and
- 2633 (3) may be made on conditions, which may include conditions about repayment¹³.

The Distributor may accept gifts¹⁴.

The Distributor must keep proper accounting records, and prepare a statement of accounts in respect of each financial year¹⁵. The Distributor must send a copy of such a statement to the Secretary of State or the Paymaster General, and to the Comptroller and Auditor General¹⁶ within such period, beginning with the end of the financial year to which the statement relates, as the Secretary of State or the Paymaster General may, with the consent of the Treasury, direct¹⁷. The Comptroller and Auditor General must examine, certify and report on a statement so received and must lay a copy of the statement and his report before Parliament¹⁸.

1 As to the Olympic Lottery Distributor see PARA 735.

2 As to the Secretary of State see PARA 2.

3 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 19(1) (Sch 5 paras 19, 23, 25 amended by SI 2007/2129).

- 4 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 19(2) (as amended: see note 3).
- 5 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 19(3) (as amended: see note 3).
- 6 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 20(1).
- 7 See the Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 20(2).
- 8 le under the Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 13: see PARA 735.
- 9 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 21.
- 10 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 22.
- 11 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 23(1) (as amended: see note 3).
- 12 le under the Horserace Betting and Olympic Lottery Act 2004 s 30: see PARA 737.
- 13 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 23(2) (as amended: see note 3).
- 14 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 24.
- 15 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 25(1). As to the meaning of 'financial year' for these purposes see PARA 735 note 26.
- 16 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 25(2) (as amended: see note 3).
- 17 See the Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 25(3) (as amended: see note 3).
- 18 Horserace Betting and Olympic Lottery Act 2004 Sch 5 para 25(4).

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737. Distribution by the Olympic Lottery Distributor.

The Olympic Lottery Distributor ('the Distributor')¹ must² distribute, by way of grant or loan³, money received by it, whether as a payment from the Olympic Lottery Distribution Fund⁴ or otherwise⁵. The Distributor may make a grant or loan only if it considers it necessary or expedient for the purpose of or in connection with:

- 2634 (1) the provision of facilities which are necessary or expedient if London is to be the host city of the 2012 Olympic Games⁶; or
- 2635 (2) any other service or function which it is necessary or expedient to provide or undertake if London is to be the host city of the 2012 Olympic Games⁷.

The Secretary of State⁸ or the Paymaster General may by regulations provide that a specified class of expenditure is to be treated as satisfying, or as not satisfying, the requirements of heads (1) and (2) above⁹.

In exercising its functions under these provisions the Distributor must have regard to the Olympic Charter¹⁰, and to any agreement entered into by or on behalf of the International Olympic Committee in the course of or in connection with the election of London as the host city for the 2012 Olympic Games¹¹. A grant or loan may, in particular, fund expenditure related to the provision of facilities outside London and cultural and other events held in accordance with a provision of the Olympic Charter or in accordance with an agreement entered into by or on behalf of the International Olympic Committee¹². A grant or loan may be subject to conditions which may, in particular, include conditions:

- 2636 (a) as to repayment, with or without interest;
- 2637 (b) providing for payments to be made only with the consent of a specified person¹³.

The Distributor must comply with any requirement of the Secretary of State or the Paymaster General to prepare a policy for the distribution of money under the above provisions or to review and revise the policy¹⁴. Such a requirement may include provision, which may supplement or amplify heads (i) to (iv) below, about the form and content of the policy¹⁵. A policy must, in particular:

- 2638 (i) estimate the Distributor's annual income;
- 2639 (ii) specify the sources of the income estimated;
- 2640 (iii) specify matters in respect of which the Distributor thinks that it will or may make grants or loans; and
- 2641 (iv) estimate, where possible, the amount of grants or loans that the Distributor will or may make¹⁶.

Before preparing or revising a policy the Distributor must submit a draft of the policy or revision to the Secretary of State or the Paymaster General, and must consult the National Lottery

Commission¹⁷, the Mayor of London, the National Olympic Committee of the United Kingdom¹⁸ and the British Paralympic Association¹⁹.

As soon as is reasonably practicable the Director must send a copy of a policy or revision under the above provisions to the Secretary of State or the Paymaster General, to the Mayor of London, to the National Olympic Committee and to the British Paralympic Association²⁰. Where the Secretary of State or the Paymaster General so receives a copy of a policy or revision he must lay it before Parliament²¹.

- 1 As to the Olympic Lottery Distributor see PARA 735.
- 2 le subject to the Horserace Betting and Olympic Lottery Act 2004 Sch 5 Pt 3 (paras 19-26): see PARA 736.
- 3 For these purposes, a reference to the making of a loan includes a reference to the provision of any other kind of financial assistance: Horserace Betting and Olympic Lottery Act 2004 s 33(2).
- 4 le under the Horserace Betting and Olympic Lottery Act 2004 s 26: see PARA 718. As to the Olympic Lottery Distribution Fund see PARA 717.
- 5 Horserace Betting and Olympic Lottery Act 2004 s 30(1).
- 6 As to the meaning of 'the 2012 Olympic Games' see PARA 698 note 6.
- 7 Horserace Betting and Olympic Lottery Act 2004 s 30(2).
- 8 As to the Secretary of State see PARA 2.
- 9 Horserace Betting and Olympic Lottery Act 2004 s 30(6) (amended by SI 2007/2129). At the date at which this volume states the law, no such regulations had been made.
- 10 As to the Olympic Charter see PARA 698 note 6.
- 11 Horserace Betting and Olympic Lottery Act 2004 s 30(3).
- 12 Horserace Betting and Olympic Lottery Act 2004 s 30(4).
- 13 Horserace Betting and Olympic Lottery Act 2004 s 30(5).
- 14 Horserace Betting and Olympic Lottery Act 2004 s 31(1) (s 31(1), (4)-(6) amended by SI 2007/2129).
- 15 Horserace Betting and Olympic Lottery Act 2004 s 31(3).
- 16 Horserace Betting and Olympic Lottery Act 2004 s 31(2).
- 17 As to the National Lottery Commission see PARA 7.
- 18 See the Horserace Betting and Olympic Lottery Act 2004 s 33(1)(b).
- 19 Horserace Betting and Olympic Lottery Act 2004 s 31(4) (as amended: see note 14).
- 20 Horserace Betting and Olympic Lottery Act 2004 s 31(5) (as amended: see note 14).
- 21 Horserace Betting and Olympic Lottery Act 2004 s 31(6) (as amended: see note 14).

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738. Power to dissolve the Olympic Lottery Distributor.

The Secretary of State¹ or the Paymaster General may by order make provision for the dissolution of the Olympic Lottery Distributor ('the Distributor')². Such an order may, in particular:

- 2642 (1) provide for the transfer of property, rights or liabilities of the Distributor to the Secretary of State³ or to any other person⁴;
 - 2643 (2) make provision enabling a person to receive anything transferred under head (1) above; and that provision is to have effect despite any other enactment or instrument⁵;
 - 2644 (3) establish a body corporate⁶;
 - 2645 (4) make consequential, incidental or transitional provision which may, in particular:
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- 318. (a) provide for anything done by or in relation to the Distributor to have effect as if done by or in relation to another person;
 - 319. (b) permit anything, which may include legal proceedings, which is in the process of being done by or in relation to the Distributor when a transfer takes effect, to be continued by or in relation to another person;
 - 320. (c) provide for a reference to the Distributor in an instrument or other document to be treated as a reference to another person⁷.
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Such an order may transfer rights and liabilities relating to employees, but does not affect the operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006⁸.

1 As to the Secretary of State see PARA 2.

2 Horserace Betting and Olympic Lottery Act 2004 s 32(1) (amended by SI 2007/2129).

3 An order transferring a sum of money to the Secretary of State under the Horserace Betting and Olympic Lottery Act 2004 s 32(2)(a)(i) may require the Secretary of State to pay the sum into the National Lottery Distribution Fund; and an order containing such provision must specify whether the payment is to be (1) treated as having been paid into the National Lottery Distribution Fund by virtue of (a) at the date at which this volume states the law, the National Lottery etc Act 1993 s 5(6) (as that provision has effect in relation to the existing licensing system) (see PARA 691) or (b) as from a day to be appointed under the National Lottery Act 2006 s 6(1) (see PARA 687), under the National Lottery etc Act 1993 s 5(2)(c) (as that provision has effect in relation to the prospective new licensing system) (see PARA 694); or (2) allocated entirely for expenditure on or connected with sport and held in accordance with s 23(2) (distributing bodies for sports: see PARA 721): Horserace Betting and Olympic Lottery Act 2004 s 32(3) (prospectively amended by the National Lottery Act 2006 Sch 1 para 16(1), (7), as from a day to be appointed under s 6(1); at the date at which this volume states the law, no such day had been appointed and that amendment was not in force). Provision by virtue of the Horserace Betting and Olympic Lottery Act 2004 s 32(3)(b) (see head (2) above) may provide for the National Lottery etc Act 1993 s 23(2) to apply with specified modifications (which may, in particular, include modifications reducing a distributor's share to nil): Horserace Betting and Olympic Lottery Act 2004 s 32(4).

4 Horserace Betting and Olympic Lottery Act 2004 s 32(2)(a). Neither the Secretary of State nor the Paymaster General may make an order under s 32 providing for the transfer of property, rights or liabilities to a person unless the person has consented to the transfer: s 32(5) (amended by SI 2007/2129).

5 Horserace Betting and Olympic Lottery Act 2004 s 32(2)(b).

6 Horserace Betting and Olympic Lottery Act 2004 s 32(2)(c).

7 Horserace Betting and Olympic Lottery Act 2004 s 32(2)(d).

8 Horserace Betting and Olympic Lottery Act 2004 s 32(6) (amended by SI 2006/246). Neither the Secretary of State nor the Paymaster General may make an order transferring rights and liabilities relating to employees unless satisfied that sufficient notice has been given to enable compliance with any applicable requirement of the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246: see the Horserace Betting and Olympic Lottery Act 2004 s 32(6) (amended by SI 2007/2129). As to those 2006 regulations, commonly referred to as the 'TUPE' regulations, see **EMPLOYMENT**.

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(iv) Distribution to the National Endowment for Science, Technology and the Arts ('NESTA')

739. Establishment, constitution and proceedings of the National Endowment for Science, Technology and the Arts.

There is a body corporate known as the National Endowment for Science, Technology and the Arts ('NESTA')¹. NESTA must consist of not more than 15 members ('trustees'), all of whom must be appointed by the Secretary of State² and one of whom must be so appointed as chairman³. Before making any such appointment, the Secretary of State must consult such persons as appear to him to be representative of those engaged in the fields of science, technology and the arts⁴.

NESTA may appoint any other body or person to exercise on its behalf any of its statutory functions⁵ in any particular case or in cases of any particular description⁶. The persons who may be so appointed include a trustee⁷, member of staff or committee of NESTA⁸. NESTA may also establish a committee for the purpose of exercising on behalf of NESTA any such function as is mentioned above⁹. A committee so established may consist of or include persons who are trustees of NESTA, persons who are members of staff of NESTA or persons who are neither trustees nor members of staff of NESTA¹⁰.

Subject to the following provisions, a person holds and vacates office as chairman or trustee of NESTA in accordance with the terms of his appointment¹¹. The chairman and any other member in receipt of remuneration are disqualified for membership of the House of Commons or the Northern Ireland Assembly¹². The Secretary of State may not appoint a person to hold office as a trustee of NESTA for a term of more than five years¹³. A chairman or trustee of NESTA may at any time resign his office by notice in writing addressed to the Secretary of State¹⁴ and a trustee of NESTA may be removed from office by the Secretary of State on the ground that:

- 2646 (1) he has been absent for a period longer than three consecutive months from meetings of NESTA, or of any committee of NESTA, without NESTA's consent;
- 2647 (2) a bankruptcy order has been made against him, or his estate has been sequestrated, or he has made a composition or arrangement with, or granted a trust deed for, his creditors; or
- 2648 (3) he is unable or unfit to discharge the functions of his office¹⁵.

If a chairman of NESTA ceases to be a trustee of NESTA he also ceases to be chairman¹⁶. A person who ceases, otherwise than by virtue of such removal, to be a trustee or chairman of NESTA is eligible for re-appointment¹⁷.

If the Secretary of State so determines, NESTA may pay such remuneration to its chairman or any other trustee of NESTA as the Secretary of State may determine¹⁸. NESTA may, in accordance with any scheme for the time being approved by the Secretary of State, pay travelling and other allowances to its chairman, to any other trustee of NESTA, to any member of a committee of NESTA or to any person who exercises¹⁹ on behalf of NESTA any of its statutory functions²⁰. Where the Secretary of State so determines in the case of a holder of the

office of chairman of NESTA, or in the case of any other trustee of NESTA, NESTA must pay to or in respect of him such pension, allowances or gratuities, or make such payments towards the provision of a pension, allowances or gratuities to or in respect of him, as the Secretary of State may determine²¹. If the Secretary of State determines that there are special circumstances that make it right for a person ceasing to hold office as chairman of NESTA, or ceasing to be a trustee of NESTA, to receive compensation, NESTA may pay to him such compensation as the Secretary of State may determine²².

Subject to any directions given by the Secretary of State²³, NESTA may appoint such staff as it thinks fit, on such terms, including terms as to remuneration and pensions, as it thinks fit²⁴.

NESTA may regulate its own procedure and that of any of its committees, and in particular may specify a quorum for meetings²⁵. The validity of any proceedings of NESTA is not affected by any vacancy among its trustees, or by any defect in the appointment of any person as chairman or as a trustee²⁶. The application of the seal of NESTA must be authenticated by the signature of any trustee of NESTA, or of any other person who has been authorised by NESTA, whether generally or specially, for that purpose²⁷. A document purporting to be duly executed under the seal of NESTA or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, is to be taken to be so executed or signed²⁸.

NESTA is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown²⁹.

1 National Lottery Act 1998 s 16(1).

2 As to the Secretary of State see PARA 2.

3 National Lottery Act 1998 Sch 4 para 1(1). The Secretary of State may by order amend Sch 4 para 1(1) by order made by statutory instrument so as to increase the number for the time being specified therein: Sch 4 para 1(3), (4).

4 National Lottery Act 1998 Sch 4 para 1(2). For these purposes, any reference to the arts includes a reference to (1) architecture, design or crafts; (2) the film, audio-visual or broadcasting industries; and (3) the music industry: s 25(2).

5 In its functions under the National Lottery Act 1998 Pt II (ss 16-25, Sch 4): see the text and notes 6-29; and PARA 740 et seq.

6 National Lottery Act 1998 Sch 4 para 2(1).

7 Any reference in the National Lottery Act 1998 Sch 4 para 2 to a trustee of NESTA includes a reference to the chairman of NESTA: Sch 4 para 2(5).

8 National Lottery Act 1998 Sch 4 para 2(2).

9 National Lottery Act 1998 Sch 4 para 2(3).

10 National Lottery Act 1998 Sch 4 para 2(4); and see note 7.

11 National Lottery Act 1998 Sch 4 para 3(1).

12 See the National Lottery Act 1998 Sch 4 para 10.

13 National Lottery Act 1998 Sch 4 para 3(2).

14 National Lottery Act 1998 Sch 4 para 3(3).

15 National Lottery Act 1998 Sch 4 para 3(4).

16 National Lottery Act 1998 Sch 4 para 3(5).

17 National Lottery Act 1998 Sch 4 para 3(6).

- 18 National Lottery Act 1998 Sch 4 para 4(1).
- 19 le by virtue of the National Lottery Act 1998 Sch 4 para 2: see the text and notes 5-10.
- 20 National Lottery Act 1998 Sch 4 para 4(2).
- 21 National Lottery Act 1998 Sch 4 para 4(3).
- 22 National Lottery Act 1998 Sch 4 para 4(4).
- 23 le under the National Lottery Act 1998 s 21: see PARA 742.
- 24 National Lottery Act 1998 Sch 4 para 5.
- 25 National Lottery Act 1998 Sch 4 para 6(1).
- 26 National Lottery Act 1998 Sch 4 para 6(2).
- 27 National Lottery Act 1998 Sch 4 para 7.
- 28 National Lottery Act 1998 Sch 4 para 8.
- 29 National Lottery Act 1998 Sch 4 para 9.

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740. Objects, general duty and powers of the National Endowment for Science, Technology and the Arts.

The objects of the National Endowment for Science, Technology and the Arts ('NESTA')¹ are to support and promote talent, innovation and creativity in the fields of science, technology and the arts². Those objects of NESTA are to be achieved by the following means, namely:

- 2649 (1) helping talented individuals, or groups of such individuals, in the fields of science, technology and the arts to achieve their potential;
- 2650 (2) helping persons to turn inventions or ideas in the fields of science, technology and the arts into products or services which can be effectively exploited and the rights to which can be adequately protected; and
- 2651 (3) contributing to public knowledge and appreciation of science, technology and the arts³.

At the request of NESTA, the Secretary of State⁴ may by order amend heads (1) to (3) above so as to add to, remove or vary any of the means by which NESTA is to achieve its objects⁵.

NESTA is under a general duty to achieve its objects by the means for the time being specified in heads (1) to (3) above⁶. Subject to any directions of the Secretary of State⁷, NESTA may do anything which appears to it to be necessary or expedient for the purpose of or in connection with achieving its objects, including in particular:

- 2652 (a) giving financial assistance to persons, whether by way of grant, loan or otherwise;
- 2653 (b) attaching conditions to any financial assistance given, including conditions requiring repayment, payment of interest or payment of other amounts;
- 2654 (c) acquiring and disposing of, or exploiting, land and other property⁸;
- 2655 (d) taking charges or other forms of security over land and other property;
- 2656 (e) entering into contracts of whatever nature;
- 2657 (f) forming, or acquiring and disposing of interests in, bodies corporate;
- 2658 (g) acting with other persons, whether by way of partnership, joint venture or otherwise;
- 2659 (h) accepting gifts of assistance, money, land and other property; and
- 2660 (i) investing money not immediately required for the purpose of achieving its objects⁹.

NESTA may not, without the approval of the Secretary of State, borrow money or make or enter into arrangements which give rise to, or may give rise to, contingent liabilities of an unusual nature¹⁰.

1 As to NESTA see PARA 739.

2 National Lottery Act 1998 s 17(1). As to the meaning of 'the arts' see PARA 739 note 4.

3 National Lottery Act 1998 s 17(2).

4 As to the Secretary of State see PARA 2.

5 National Lottery Act 1998 s 17(3).

6 National Lottery Act 1998 s 18(1).

7 le under the National Lottery Act 1998 s 20 or s 21: see PARA 742.

8 For these purposes, any reference to property includes a reference to intellectual property: National Lottery Act 1998 s 25(3).

9 National Lottery Act 1998 s 18(2).

10 National Lottery Act 1998 s 18(3). Directions under s 21 (see PARA 742) may include provision for the purpose of determining whether arrangements are such as give rise to, or may give rise to, contingent liabilities of an unusual nature: s 18(4). Any directions under Pt II (ss 16-25, Sch 4) must be given in writing and may be varied or revoked by subsequent directions: s 25(4).

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741. Endowment from National Lottery funds.

For the purpose of providing the National Endowment for Science, Technology and the Arts ('NESTA')¹ with an endowment to enable it to achieve its objects², the Secretary of State³ had power, before the end of the period of one year beginning with 2 July 1998⁴, to make one or more payments to NESTA out of money held in the National Lottery Distribution Fund⁵ and allocated for expenditure on or connected with health, education or the environment⁶.

For the purpose of increasing the amount of NESTA's endowment⁷, the Secretary of State may, at any time after the end of that period, make an order permitting him to pay to NESTA, out of money held in the National Lottery Distribution Fund and allocated for such one or more of the descriptions for the time being mentioned in the relevant statutory provision⁸ as may be specified in the order, such sum or, as the case may be, such sums, whether or not of equal amounts, as may be so specified⁹. Before making such an order, the Secretary of State must consult each of the distributing bodies¹⁰. Where an order is so made, the Secretary of State may make the payment or payments permitted by the order¹¹.

NESTA may not spend its endowment¹², or any part of its endowment, without the approval of the Secretary of State¹³.

1 As to NESTA see PARA 739.

2 As to NESTA's objects see PARA 740.

3 As to the Secretary of State see PARA 2.

4 Ie the date when the National Lottery Act 1998 was passed.

5 As to the National Lottery Distribution Fund see PARA 713.

6 National Lottery Act 1998 s 19(1). As to allocation for the purposes mentioned in the text see PARA 713.

7 In the National Lottery Act 1998 19(2), (5), 'endowment' means the aggregate of any amounts paid to NESTA under s 19(1) or (4): s 19(6).

8 Ie mentioned in the National Lottery etc Act 1993 s 22(3): see PARA 713.

9 National Lottery Act 1998 s 19(2). In the exercise of this power, the Secretary of State has made the National Endowment for Science, Technology and the Arts (Increase of Endowment) Order 2003, SI 2003/235; and the National Endowment for Science, Technology and the Arts (Increase of Endowment) Order 2006, SI 2006/396.

10 See the National Lottery Act 1998 s 19(3). As to the distributing bodies see the National Lottery etc Act 1993 s 23; and PARA 721.

11 National Lottery Act 1998 s 19(4).

12 See note 7.

13 National Lottery Act 1998 s 19(5).

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742. Solicitation of gifts and investment of money; financial directions etc.

The National Endowment for Science, Technology and the Arts ('NESTA')¹ is under a duty to seek gifts of assistance, money, land and other property², but in seeking or accepting any such gifts NESTA must comply with any directions given to it by the Secretary of State³. Except to the extent that financial directions of the Secretary of State⁴ otherwise provide, NESTA must pay its endowment⁵, and any other money held by NESTA which is not immediately required by it for the purpose of achieving its objects⁶, to the National Debt Commissioners for investment by them in accordance with any instructions given to them by NESTA⁷. In giving such instructions to the National Debt Commissioners, NESTA must comply with any financial directions⁸ of the Secretary of State⁹. The expenses of the National Debt Commissioners in making any such investment must be met by NESTA¹⁰.

NESTA must comply with any directions given to it by the Secretary of State:

- 2661 (1) in connection with the management, control or investment of its endowment¹¹ or any other money held by it;
- 2662 (2) in connection with the management, control, use or exploitation of any property in which it has an interest;
- 2663 (3) in connection with the control of its administrative costs, including staff costs; or
- 2664 (4) otherwise in connection with its financial affairs¹².

The Secretary of State must consult NESTA before giving any directions to it under heads (1) to (4) above¹³. If NESTA fails to comply with any direction so given to it, the Secretary of State may, after taking into account any representations made by NESTA, require NESTA to pay to him such amount as the Secretary of State thinks appropriate having regard to the extent or degree of that failure¹⁴. The amount, or the aggregate of any amounts, which NESTA is so required to pay must not exceed the amount of its endowment¹⁵. Any amount which NESTA is so required to pay is recoverable by the Secretary of State as a debt due to him from NESTA¹⁶ and he must pay any amount so received by him into the National Lottery Distribution Fund¹⁷.

1 As to NESTA see PARA 739.

2 As to the meaning of 'property' see PARA 740 note 8.

3 National Lottery Act 1998 s 20(1). As to the Secretary of State see PARA 2. As to directions see generally PARA 740 note 10.

4 I.e. directions under the National Lottery Act 1998 s 21: see the text and notes 11-17.

5 As to the meaning of 'endowment' for these purposes see PARA 741 note 7 (definition applied by the National Lottery Act 1998 ss 20(5), 21(7)).

6 As to NESTA's objects see PARA 740.

7 National Lottery Act 1998 s 20(2).

8 See note 4.

- 9 National Lottery Act 1998 s 20(3).
- 10 National Lottery Act 1998 s 20(4).
- 11 See note 5.
- 12 National Lottery Act 1998 s 21(1).
- 13 National Lottery Act 1998 s 21(6).
- 14 National Lottery Act 1998 s 21(2).
- 15 National Lottery Act 1998 s 21(3); and see note 5.
- 16 National Lottery Act 1998 s 21(4).
- 17 National Lottery Act 1998 s 21(5). As to the National Lottery Distribution Fund see PARA 713.

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743. Annual report, forward plans and accounts.

As soon as possible after the end of each financial year¹, the National Endowment for Science, Technology and the Arts ('NESTA')² must make a report to the Secretary of State³ on the activities of NESTA during that year⁴. The report must set out any directions given to NESTA⁵ that had effect during the financial year to which the report relates⁶.

NESTA must from time to time draw up a forward plan⁷. As soon as possible after drawing up a forward plan, NESTA must send a copy of the plan to the Secretary of State and must publish and publicise the plan⁸.

The Secretary of State must lay a copy of every report and forward plan received by him under the above provisions before Parliament⁹.

NESTA must keep proper accounts and proper records in relation to the accounts, and must prepare a statement of accounts in respect of each financial year¹⁰. The statement must comply with any directions that may be given by the Secretary of State, with the Treasury's approval¹¹, as to the information to be contained in such a statement, the manner in which such information is to be presented or the methods and principles according to which such a statement is to be prepared¹². Copies of the statement must be sent to the Secretary of State and the Comptroller and Auditor General within such period after the end of the financial year to which the statement relates as the Secretary of State may direct¹³. The Comptroller and Auditor General must examine, certify and report on the statement and must lay copies of the statement and of his report before Parliament¹⁴.

1 'Financial year', in relation to NESTA, means the period beginning with the date on which NESTA was established and ending with the next 31 March following that date, and each successive period of 12 months ending with 31 March: National Lottery Act 1998 s 25(1). NESTA was established on 2 July 1998.

2 As to NESTA see PARA 739.

3 As to the Secretary of State see PARA 2.

4 National Lottery Act 1998 s 22(1).

5 Ie under the National Lottery Act 1998 s 20 or s 21: see PARA 742.

6 National Lottery Act 1998 s 22(2).

7 National Lottery Act 1998 s 22(3). For these purposes, 'forward plan' means a plan for a future period which sets out the strategy which NESTA proposes to follow during that period for the purpose of achieving its objects: s 22(6). As to the objects of NESTA see PARA 740.

8 National Lottery Act 1998 s 22(4).

9 National Lottery Act 1998 s 22(5).

10 National Lottery Act 1998 s 23(1).

11 See the National Lottery Act 1998 s 23(5).

12 National Lottery Act 1998 s 23(2). As to directions see generally PARA 740 note 10.

13 National Lottery Act 1998 s 23(3).

14 National Lottery Act 1998 s 23(4).

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6. TAXATION OF GAMBLING

(1) INTRODUCTION

744. Income tax and general taxation.

Profits from betting, gaming or wagering are assessable to income tax¹ in the same way as ordinary income, provided that the activity from which the profits arise is one which is carried on by way of a trade, profession or vocation². If a company which is resident in the United Kingdom carries on such activities it is liable to corporation tax on its profits³. However, profits which arise from an activity which is merely recreational are not assessable to these taxes⁴. The sale of assets (for example, racehorses) connected with betting will attract capital gains tax in appropriate cases⁵, but winnings from betting, including pool betting, or lotteries or games with prizes, and rights to any such winnings, are not chargeable to capital gains tax⁶.

The provision of any facilities for the placing bets or for the playing of any games of chance⁷ for a prize⁸ or the granting of a right to take part in a lottery is an exempt supply of services and therefore exempt from a charge to value added tax⁹; but the following are not exempt supplies of services, namely:

- 2665 (1) admission to any premises¹⁰; or
- 2666 (2) the granting of a right to play a game of chance for a prize unless the playing of the game is excepted¹¹ from this provision¹²; or
- 2667 (3) the provision by a club of such facilities to its members as are available to them on payment of their subscriptions but without further charge¹³; or
- 2668 (4) the provision of anything which is a gaming machine¹⁴ within the statutory definition¹⁵;

and such supplies are therefore liable to value added tax¹⁶. The provision¹⁷ of a gaming machine¹⁸ is also excluded from exemption; therefore where a person gambles by means of a gaming machine, the amount paid by him to play (reduced by the amount received by persons gambling successfully) is charged to value added tax¹⁹.

1 See **INCOME TAXATION** vol 23(1) (Reissue) PARA 117.

2 *Partridge v Mallandaine* (1886) 18 QBD 276, 2 TC 179. See also the Income Tax (Trading and Other Income) Act 2005 s 5; the Income and Corporation Taxes Act 1988 s 18, Schedule D; and **INCOME TAXATION** vol 23(1) (Reissue) PARA 88 et seq. However, an individual who makes frequent bets with no business organisation is unlikely to be carrying on a trade: *Graham v Green (Inspector of Taxes)* [1925] 2 KB 37, 9 TC 309.

3 See the Income and Corporation Taxes Act 1988 ss 6, 8; and **INCOME TAXATION** vol 23(1) (Reissue) PARAS 6, 835. As to the meaning of 'United Kingdom' see PARA 16 note 8.

4 See eg *Norman v Evans* [1965] 1 All ER 372, [1965] 1 WLR 348. The owner of a club who plays regularly with its members is not playing recreationally: *Burdge v Pyne* [1969] 1 All ER 467, [1969] 1 WLR 364. A members' club does not trade and thus is not liable to taxation on any surplus from the provision of gambling facilities for its members (*IRC v Eccentric Club Ltd* [1923] 2 KB 514, 12 TC 657); but it is liable to corporation tax on any surplus from transactions with non-members (*Carlisle and Silloth Golf Club v Smith* [1912] 2 KB 177, 6 TC 48).

5 See **CAPITAL GAINS TAXATION** vol 5(1) (2004 Reissue) PARA 8 et seq.

6 Taxation of Chargeable Gains Act 1992 s 51(1).

7 For these purposes, 'game of chance' includes (1) a game that involves both an element of chance and an element of skill; (2) a game that involves an element of chance that can be eliminated by superlative skill; and (3) a game that is presented as involving an element of chance; but does not include a sport: Value Added Tax Act 1994 s 31, Sch 9 Pt II Group 4 Note (2) (Notes (2)-(4) substituted by SI 2006/2685). A person plays a game of chance if he participates in a game of chance (a) whether or not there are other participants in the game; and (b) whether or not a computer generates images or data taken to represent the actions of other participants in the game: Sch 9 Pt II Group 4 Note (3) (as so substituted).

8 'Prize' does not include the opportunity to play the game again: Value Added Tax Act 1994 Sch 9 Pt II Group 4 Note (4) (as substituted: see note 7).

9 Value Added Tax Act 1994 Sch 9 Pt II Group 4 items 1, 2 (amended by SI 2006/2685).

10 Value Added Tax Act 1994 Sch 9 Pt II Group 4 Note (1)(a).

11 Ie by the Value Added Tax Act 1994 Sch 9 Pt II Group 4 Note (5): see note 12.

12 Value Added Tax Act 1994 Sch 9 Pt II Group 4 Note (1)(b) (substituted by SI 2007/2163). The playing of a game of chance for a prize is excepted from the Value Added Tax Act 1994 Sch 9 Pt II Group 4 Note (1)(b) if the playing of the game constitutes (1) remote gaming for the purposes of remote gaming duty (see PARA 783 et seq); (2) prize gaming under a permit or at any qualifying centre or fair; (3) non-commercial gaming; (4) equal chance gaming at a qualifying club or institute; or (5) gaming for small prizes in a bingo hall: Sch 9 Pt II Group 4 Note (5) (Notes (5)-(11) added by SI 2007/2163). For these purposes: (a) 'prize gaming under a permit or at any qualifying centre or fair' means, in Great Britain, the playing of a game where the provision of facilities for its playing falls within the Gambling Act 2005 s 289, s 290 or s 292 (prize gaming under a permit, at gaming and entertainment centres and at fairs: see PARAS 673, 674, 676) (Value Added Tax Act 1994 Sch 9 Pt II Group 4 Notes (6)(a), (11) (as so added)); for the definition applying in Northern Ireland see Sch 9 Pt II Group 4 Note (6) (b) (as so added)); (b) 'non-commercial gaming' means, in Great Britain, the playing of a game in respect of which the conditions in the Gambling Act 2005 s 299 or s 300 are complied with (non-commercial prize and equal chance gaming: see PARA 652) (Value Added Tax Act 1994 Sch 9 Pt II Group 4 Note (7)(a) (as so added)); for the definition applying in Northern Ireland see Sch 9 Pt II Group 4 Note (7)(b) (as so added)); (c) 'equal chance gaming at a qualifying club or institute' means, in Great Britain, the playing of a game where the provision of facilities for its playing falls within the Gambling Act 2005 s 269 (equal chance gaming by members' or commercial clubs and miners' welfare institutes: see PARA 665) (Value Added Tax Act 1994 Sch 9 Pt II Group 4 Note (8)(a) (as so added)); for the definition applying in Northern Ireland see Sch 9 Pt II Group 4 Note (8)(b) (as so added)); (d) 'gaming for small prizes in a bingo hall' means, in Great Britain, the playing of a game where the provision of facilities for its playing falls within the Gambling Act 2005 s 291 (bingo halls: see PARA 675) or the playing at any licensed premises of bingo in respect of which the conditions in the Value Added Tax Act 1994 Sch 9 Pt II Note (10) are complied with (Value Added Tax Act 1994 Sch 9 Pt II Group 4 Note (9)(a) (as so added)); for the definition applying in Northern Ireland see Sch 9 Pt II Group 4 Note (9)(b) (as so added)); and for the purposes of head (d) above, 'licensed premises' means premises in respect of which a bingo premises licence (within the meaning of the Gambling Act 2005 Pt 8 (ss 150-215, Sch 9; see PARA 460 et seq) has effect (Value Added Tax Act 1994 Sch 9 Pt II Group 4 Note (9)). The conditions in the Value Added Tax Act 1994 Sch 9 Pt II Group 4 Note (10) are that: (i) the amount charged for any one chance to win one or more prizes in a particular game does not exceed 50 pence; (ii) the aggregate amount charged for participating in a particular game does not exceed £500; (iii) no money prize for which a game is played exceeds £50; and (iv) the aggregate amount or value of the prizes for which a game is played does not exceed £500: Sch 9 Pt II Group 4 Note (10) (as so added).

13 Value Added Tax Act 1994 Sch 9 Pt II Group 4 Note (1)(c).

14 Ie for the purposes of the Value Added Tax Act 1994 s 23.

15 Value Added Tax Act 1994 Sch 9 Pt II Group 4 Note (1)(d) (amended by SI 2006/2685).

16 See the Value Added Tax Act 1994 ss 1(2), 4. As to value added tax generally see **VALUE ADDED TAX**.

17 'Provision' means provision to players, rather than supply of the gaming machine itself: *Feehan v Customs and Excise Comrs* [1995] STC 75.

18 For these purposes, 'gaming machine' means a machine which is designed or adapted for use by individuals to gamble (whether or not it can also be used for other purposes): Value Added Tax Act 1994 s 23(4) (23(4) substituted, and s 23(5)-(7) added, by the Finance Act 2006 s 16(1), (5)). But (1) a machine is not a gaming machine to the extent that it is designed or adapted for use to bet on future real events; (2) a machine

is not a gaming machine to the extent that (a) it is designed or adapted for the playing of bingo; and (b) bingo duty is charged under the Betting and Gaming Duties Act 1981 s 17 (see PARA 766) on the playing of that bingo, or would be charged but for Sch 3 paras 1-5 (see PARA 767); and (3) a machine is not a gaming machine to the extent that (a) it is designed or adapted for the playing of a real game of chance; and (b) the playing of the game is dutiable gaming for the purposes of the Finance Act 1997 s 10 (see PARA 759), or would be dutiable gaming but for s 10(3),(4): Value Added Tax Act 1994 s 23(5) (as so added). For these purposes: (i) a reference to gambling is a reference to playing a game of chance for a prize, and betting; (ii) a reference to a machine is a reference to any apparatus which uses or applies mechanical power, electrical power or both; (iii) a reference to a machine being designed or adapted for a purpose includes a reference to a machine to which anything has been done as a result of which it can reasonably be expected to be used for that purpose; (iv) a reference to a machine being adapted includes a reference to computer software being installed on it; (v) 'real' has the meaning given by the Gambling Act 2005 s 353(1) (ie non-virtual: see PARA 495 note 12); (vi) 'game of chance' includes (A) a game that involves both an element of chance and an element of skill; (B) a game that involves an element of chance that can be eliminated by superlative skill; and (C) a game that is presented as involving an element of chance, but does not include a sport; (vii) 'bingo' means any version of that game, irrespective of by what name it is described; (viii) 'prize', in relation to a machine, does not include the opportunity to play the machine again; and (ix) a person plays a game of chance if he participates in a game of chance, whether or not there are other participants in the game, and whether or not a computer generates images or data taken to represent the actions of other participants in the game: Value Added Tax Act 1994 s 23(6) (as so added; amended by SI 2006/2686). The Treasury may by order amend the Value Added Tax Act 1994 s 23(4)-(6): s 23(7) (as so added). As to the exercise of this power see the amendments made to s 23(6).

19 See the Value Added Tax Act 1994 s 23(1), (2) (amended by the Finance Act 2006 ss 16(1)-(3), 178, Sch 26 Pt 2). As to tokens see the Value Added Tax Act 1994 s 23(3) (amended by the Finance Act 2006 s 16(4)). See generally **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 106.

UPDATE

744 Income tax and general taxation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

NOTE 3--Income and Corporation Taxes Act 1988 ss 6, 8 replaced in part by Corporation Tax Act 2009 ss 2-8.

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745. Taxation peculiar to gambling.

The statutory provisions relating to the taxation of gambling, other than lotteries, were consolidated in the Betting and Gaming Duties 1981, which has subsequently been amended¹. The taxes, in the form of excise duties, which are imposed by that Act are: (1) general betting duty²; (2) pool betting duty³; (4) bingo duty⁴; (5) amusement machine licence duty⁵; and (6) remote gaming duty⁶. The imposition of these various duties does not make lawful anything which is unlawful apart from that Act⁷.

The Finance Act 1993 makes provision relating to lottery duty⁸. The Finance Act 1997 introduced gaming duty, which replaced the former gaming licence duty under the 1981 Act⁹.

1 Any provision of the Betting and Gaming Duties Act 1981 relating to anything done or required or authorised to be done under that Act has effect as if any reference to that provision included a reference to the corresponding provision of the enactments repealed by the Act, and, where the corresponding provision is a provision of the Betting and Gaming Duties Act 1972 (repealed), to the corresponding provision of the enactments repealed by that Act: Betting and Gaming Duties Act 1981 s 34(1), Sch 6 para 2. Where any Act or document refers either expressly or by implication to an enactment repealed by the Betting and Gaming Duties Act 1972 (repealed) or the Betting and Gaming Duties Act 1981 the reference is, except where the context otherwise requires, construed as, or as including, the corresponding provisions of those two Acts: Sch 6 para 7.

The Betting and Gaming Duties Act 1981 applies to limited liability partnerships as it applies to companies, and in its application to a limited liability partnership, references to a director of a company are references to a member of the limited liability partnership: s 32A(1), (2) (s 32A added by SI 2001/1090).

2 See PARA 748 et seq.

3 See PARA 753 et seq.

4 See PARA 766 et seq.

5 See PARA 771 et seq.

6 See PARA 783 et seq.

7 See the Betting and Gaming Duties Act 1981 s 33(2) (amended by the Finance Act 1995 Sch 3 para 9(1); the Finance Act 2007 Sch 1 Pt 2 para 6).

8 See PARAS 789-793.

9 See PARA 759 et seq. The gaming duty provisions of the Finance Act 1997 are to be construed as one with the Customs and Excise Management Act 1979 (see **CUSTOMS AND EXCISE**): Finance Act 1997 s 15(2).

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746. Role of the Commissioners for Revenue and Customs.

The powers and functions of the Commissioners for Revenue and Customs¹ in relation to the taxation peculiar to gambling are discussed below in the context in which they arise².

A certificate of the Commissioners for Revenue and Customs that at any date any notice, permit, licence or authority required by or under the Betting and Gaming Duties Act 1981 had not been given or issued, or any return required had not been made, or any duty due had not been paid³, is sufficient evidence of the fact unless the contrary is proved⁴.

If any action taken by an officer⁵ of Revenue and Customs in pursuance of instructions issued by the Commissioners or a Collector of Revenue and Customs given in connection with the enforcement of the enactments relating to general betting duty, bingo duty, remote gaming duty or the duty on amusement licences would otherwise constitute an offence under the enactments relating to betting or gaming, the officer is not guilty of that offence⁶.

1 As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

2 See PARA 748 et seq.

3 Ie any duty shown as due in a return made in pursuance of the Betting and Gaming Duties Act 1981 or in any assessment made under the Finance Act 1994 s 12 (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1231 et seq).

4 Betting and Gaming Duties Act 1981 s 29A(1) (s 29A added by the Finance Act 1986 s 7; the Betting and Gaming Duties Act 1981 s 29A(1) amended by the Finance Act 1994 s 18(5); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). A photograph of any document furnished to the Commissioners is admissible in any proceedings if certified by the Commissioners: Betting and Gaming Duties Act 1981 s 29A(2) (as so added). Any document purporting to be a certificate under s 29A(1) or s 29A(2) is deemed to be so until the contrary is proved: s 29A(3) (as so added).

5 'Officer' see means, subject to the Customs and Excise Management Act 1979 s 8(2) (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 904), a person commissioned by the Commissioners: s 1(1) (definition applied by the Betting and Gaming Duties Act 1981 s 35(2)).

6 See the Betting and Gaming Duties Act 1981 s 31 (amended by the Finance Act 1995 Sch 3 para 9(1); the Finance Act 1997 Sch 18 Pt II; the Finance Act 2007 Sch 1 Pt 2 para 4).

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747. Estimating duty payable.

The Commissioners for Revenue and Customs¹ are given power to estimate the amount due from any person on account of the duties peculiar to gambling² where they are unable to ascertain the proper amount because of failure to keep required records or to take required steps³.

1 As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

2 As to those duties see PARA 745.

3 See the Finance Act 1994 s 12; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1231 et seq. In the case of remote gaming duty (see PARA 783 et seq), s 12 is subject to regulations under the Betting and Gaming Duties Act 1981 s 26I (see PARA 785): see s 26I(4) (added by the Finance Act 2007 Sch 1 Pt 1).

In Scotland it was held that where the Commissioners estimated duty on the grounds that a bookmaker's records were materially incomplete or inaccurate it was not necessary, in order to shift the onus of proof to the bookmaker, for them to establish that the records were in fact incomplete or inaccurate; they needed only show a bona fide exercise by them of their power to assess: *Lord Advocate v MacKay* 1984 SLT 36, Sh Ct.

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(2) BETTING DUTIES

(i) General Betting Duty

A. THE CHARGE TO DUTY

748. Charge to duty.

A duty of excise known as general betting duty is charged on the following¹:

- 2669 (1) a bet² made with a bookmaker³ who is in the United Kingdom⁴, other than:
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 - 321. (a) an on-course bet⁵;
 - 322. (b) a spread bet⁶; or
 - 323. (c) a bet made by way of pool betting; or
 - 324. (d) a bet made using a gaming machine⁷;
- 202 2670 (2) a spread bet made with a bookmaker who is in the United Kingdom⁸;
- 2671 (3) pool betting which relates only to horse racing or dog racing and is not on-course betting⁹, unless the promoter¹⁰ is outside the United Kingdom and it is conducted otherwise than by means of a totalisator situated in the United Kingdom¹¹;
- 2672 (4) the amounts ('commission charges') that the parties to the bet are charged, whether by deduction from winnings or otherwise, for using facilities where:
- 203 325. (a) one person makes a bet with another person using facilities provided by a third person in the course of a business; and
- 326. (b) that business is one that does not involve the provision of premises for use by persons making or taking bets¹².
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The amount of duty charged:

- 2673 (i) under head (1) above in respect of bets made with a bookmaker in an accounting period¹³ is 15 per cent of the amount of his net stake receipts¹⁴ for that period¹⁵;
- 2674 (ii) under head (2) above is 3 per cent of the amount of his net stake receipts in respect of financial spread bets for that period (if any), plus 10 per cent of the amount of his net stake receipts in respect of other spread bets for that period (if any)¹⁶;
- 2675 (iii) under head (3) above in respect of bets made by means of facilities provided by a person in an accounting period is 15 per cent of the amount of his net stake receipts for that period¹⁷;
- 2676 (iv) under head (4) above in respect of bets determined in an accounting period is 15 per cent of the commission charges relating to those bets¹⁸.

Where the amount of a person's net stake receipts is zero or a negative amount, it is disregarded for the purposes of the charge to duty under heads (1) to (3) above, except so far as regards relief for losses¹⁹. Where the amount of a person's net stake receipts for an accounting period in respect of a class of bets²⁰ is a negative amount, that amount is to be carried forward to the following accounting period and, to the extent that it does not exceed it, deducted from the amount of the person's net stake receipts in respect of the same class of bets for that period²¹. If the amount of those net stake receipts for that following accounting period is not a positive amount, or is less than the amount carried forward, the amount carried forward or, as the case may be, the balance of it is to be treated for these purposes as if it were a negative amount of net stake receipts for that period in respect of the same class of bets²².

All general betting duty chargeable in respect of bets made in an accounting period or, in the case of duty chargeable under head (4) in the text, bets determined in an accounting period, becomes due at the end of that period²³. In the case of bets made with a bookmaker in an accounting period, the duty must be paid by the bookmaker when it becomes due²⁴; but duty which is due to be so paid may be recovered from the following persons as if they and the bookmaker were jointly and severally liable to pay the duty, namely:

- 2677 (A) in Great Britain, the holder of a general betting operating licence²⁵ for the business in the course of which the bets were made;
- 2678 (B) a person responsible for the management of that business; or
- 2679 (C) where the bookmaker is a company, a director²⁶.

In the case of bets made in an accounting period by means of facilities provided by a person as described in head (3) or head (4) above, the duty must be paid when it becomes due by the person who provides the facilities²⁷.

General betting duty is under the care and management of the Commissioners for Revenue and Customs and is to be accounted for by such persons and paid at such times and in such manner as may be required by or under regulations of the Commissioners²⁸.

1 Betting and Gaming Duties Act 1981 s 1 (ss 1-3, 5 substituted by the Finance Act 2001 Sch 1).

2 In the Betting and Gaming Duties Act 1981 ss 1-10, s 12(1) and Sch 1 para 10, 'bet' does not include any bet made or stake hazarded in the course of, or incidentally to, any gaming: s 12(3) (amended by the Finance Act 2002 ss 12(1), 141, Sch 4, Pt 1 paras 1, 9, Sch 40 Pt 1(4)). 'Gaming' means playing a game of chance for a prize within the meaning of the Value Added Tax Act 1994 Sch 9 Pt II Group 4 (see PARA 744 notes 7-8): Betting and Gaming Duties Act 1981 s 33(1).

3 In the Betting and Gaming Duties Act 1981 Pt I (ss 1-12) 'bookmaker' means a person who (1) carries on the business of receiving or negotiating bets or conducting pool betting operations (whether as principal or agent and whether regularly or not); or (2) holds himself out or permits himself to be held out, in the course of a business, as a person within head (1) above: s 12(4) (definition substituted by the Finance Act 2004 s 15(1), (7) (a)). As to the meaning of 'pool betting' see PARA 313.

4 Betting and Gaming Duties Act 1981 s 2(1) (as substituted: see note 1).

5 A bet is an on-course bet for the purposes of the Betting and Gaming Duties Act 1981 Pt I (ss 1-12, Sch 1) if it (1) is made by a person present at a horse or dog race meeting or by a bookmaker; (2) is not made through an agent of an individual making the bet or through an intermediary; and (3) is made (a) with a bookmaker present at the meeting; or (b) by means of a totalisator situated in the United Kingdom, using facilities provided at the meeting by or by arrangement with the person operating the totalisator: s 12(4), (4A), (5) (definition in s 12(4) substituted, and s 12(4A) added, by the Finance Act 2004 s 15(1), (7)(b), (8)).

6 As to the meaning of 'spread bet' see PARA 314.

7 Betting and Gaming Duties Act 1981 s 2(2) (as substituted (see note 1); amended by the Finance Act 2002 Sch 4 Pt I para 3, Sch 40 Pt I; the Finance Act 2006 ss 9(1), 178, Sch 26 Pt 2). For the amount of duty so

charged in respect of such bets see head (i) in the text. As to the meaning of 'gaming machine' for these purposes see PARA 744 note 18 (definition applied by the Betting and Gaming Duties Act 1981 s 2(2)(d) (added by the Finance Act 2006 s 9(1)).

8 Betting and Gaming Duties Act 1981 s 3(1)(a) (as substituted: see note 1). For the amount of duty so charged in respect of spread bets see head (ii) in the text.

9 Betting and Gaming Duties Act 1981 s 4(1) (s 4 substituted by the Finance Act 2004 s 15(1), (2)). For the amount of duty so charged in respect of such bets see head (iii) in the text.

10 For these purposes, 'promoter', in relation to any betting, means the person to whom the persons making the bets look for the payment of their winnings: Betting and Gaming Duties Act 1981 s 12(4). As to the meaning of 'winnings' see PARA 313 note 16.

11 Betting and Gaming Duties Act 1981 s 4(1), (2) (as substituted: see note 9).

12 See the Betting and Gaming Duties Act 1981 s 5AB(1), (2) (s 5AB added by the Finance Act 2003 s 7(1), (2)). For these purposes, and the purposes of the Betting and Gaming Duties Act 1981 s 5B(4) (see the text and note 27) so far as relating to s 5AB, a person who arranges for facilities relating to a bet to be provided by another person is to be treated as providing them himself (and the other person is not to be so treated): s 5AB(5) (as so added).

13 An 'accounting period' is every calendar month, but the Commissioners for Revenue and Customs may provide, in regulations under the Betting and Gaming Duties Act 1981 Sch 1 para 2, for some other specified period to be an accounting period: s 5D(1) (s 5D added by the Finance Act 2001 Sch 1). Such regulations may make provision which applies generally or only in relation to a specified person or class of person, make different provision for different purposes, and make transitional provision: Betting and Gaming Duties Act 1981 s 5D(2) (as so added). As to the regulations that have been made see the General Betting Duty Regulations 2001, SI 2001/3088; and as to the non-standard accounting periods which a bookmaker may adopt by giving written notice to the Commissioners see regs 8, 10, 11 (amended by SI 2003/2631; SI 2004/768).

14 For this purpose, the amount of a person's net stake receipts for an accounting period is X minus Y, where X is the aggregate of amounts which fall due to that person in the accounting period in respect of bets of that class made with him or (in the case of a charge under the Betting and Gaming Duties Act 1981 s 4(1) (see head (3) in the text) by means of facilities provided by him, and Y is the aggregate of amounts paid by him in that period by way of winnings to persons who made bets of that class with him or by means of facilities provided by him (irrespective of when the bets were made or determined): s 5(1), (7) (as substituted (see note 1); s 5(7) amended by the Finance Act 2004 s 15(1), (3)). Where a person makes a bet other than a spread bet, and the sum which he will lose if unsuccessful is known when the bet is made, that sum is treated for the purposes of calculating X as falling due when the bet is made (irrespective of when it is actually paid or required to be paid): Betting and Gaming Duties Act 1981 s 5(2) (as so substituted). Where a person makes a bet in pursuance of an offer which permits him to pay nothing or less than the amount which he would have been required to pay without the offer, he is treated for the purposes of s 5 as being due to pay that amount to the person with whom the bet is made at the time when the bet is made: s 5(5) (as so substituted). In calculating an amount due to a person in respect of a bet, no deduction is to be made in respect of any other benefit secured by the person who makes the bet as a result of paying the money, or a person's expenses, whether in paying duty or otherwise, or any other matter: s 5(4) (as so substituted). For the purpose of calculating Y, the reference to paying an amount to a person includes a reference to holding it in an account if the person is notified that the amount is being held for him in the account and that he is entitled to withdraw it on demand; the return of a stake is treated as a payment by way of winnings, and only payments of money are to be taken into account: s 5(6) (as so substituted).

15 Betting and Gaming Duties Act 1981 s 2(3) (as substituted: see note 1).

16 Betting and Gaming Duties Act 1981 s 3(3) (as substituted: see note 1). As to the meaning of 'financial spread bet' see PARA 314.

17 Betting and Gaming Duties Act 1981 s 4(3) (as substituted: see note 9).

18 Betting and Gaming Duties Act 1981 s 5AB(4) (as added: see note 12). No deductions are allowed from commission charges: s 5AB(3) (as so added).

19 Betting and Gaming Duties Act 1981 s 5(3) (as substituted (see note 1); amended by the Finance Act 2003 s 6(1), (2)).

20 Is calculated in accordance with the Betting and Gaming Duties Act 1981 s 5(1): see note 14.

21 Betting and Gaming Duties Act 1981 s 5AA(1), (2) (s 5AA added by the Finance Act 2003 s 6(1), (3)).

22 Betting and Gaming Duties Act 1981 s 5AA(3) (as added: see note 21).

23 Betting and Gaming Duties Act 1981 s 5B(1) (s 5B added by the Finance Act 2001 Sch 1 para 1; the Betting and Gaming Duties Act 1981 s 5B(1) substituted by the Finance Act 2003 s 7(1), (3)(a)). This is without prejudice to the Betting and Gaming Duties Act 1981 Sch 1 para 2 (see the text and note 28), and regulations made thereunder: s 5B(5) (s 5B added by the Finance Act 2001 Sch 1 para 1).

24 Betting and Gaming Duties Act 1981 s 5B(2) (as added: see note 23).

25 As to the meaning of 'general betting operating licence' see PARA 349 at head (3) (definition applied by the Betting and Gaming Duties Act 1981 s 12(4) (amended for this purpose by the Finance Act 2007 Sch 25 Pt 2 paras 3, 7(1), (4)).

26 Betting and Gaming Duties Act 1981 s 5B(3) (as added (see note 23); amended by the Finance Act 2007 Sch 25 Pt 2 paras 3, 5). The persons referred to in heads (A)-(C) in the text are statutory guarantors of the bookmaker's liability to pay betting duty and their liability is wholly independent of any fault on their part: *Customs and Excise Comrs v Hedon Alpha Ltd* [1981] QB 818, [1981] 2 All ER 697, CA. There is accordingly no power to grant to a company director who is liable to pay duty under head (C) in the text relief under the Companies Act 2006 s 1157 (power to grant relief to a director in proceedings for default against an officer of a company). Where particulars of an intended bet on which general betting duty would be chargeable and the stake on that bet are collected for transmission to the person by whom that duty would fall to be paid by some other person, whether or not a bookmaker, who holds himself out as available for so collecting and transmitting them, but are in fact not so transmitted, the bet is deemed to have been made but the duty in respect of it must be paid by that other person: Betting and Gaming Duties Act 1981 s 12(1). As to the application of the Act to limited liability partnerships see PARA 745 note 1.

27 Betting and Gaming Duties Act 1981 s 5B(4) (as added (see note 23); amended by the Finance Act 2003 s 7(1), (3)(b)).

28 Betting and Gaming Duties Act 1981 Sch 1 para 2(1). Without prejudice to any other provision of Sch 1, the Commissioners may make regulations providing for any matter for which provision appears to them to be necessary for the administration or enforcement of general betting duty or for the protection of the revenue from general betting duty: Sch 1 para 2(2). Such regulations may in particular (1) provide for payments on account of the duty which may become chargeable to be made in advance by means of stamps or otherwise, and for that purpose apply, with any necessary adaptations, any of the provisions of the Stamp Duties Management Act 1891; (2) provide for such payments to be made through the persons providing, at the place where any event is or is to be held, facilities for persons engaging or proposing to engage at that place in an activity by reason of which they are or may be or become liable for duty; (3) require persons providing such facilities as are mentioned in head (2) above at any place to perform other functions in connection with the payment of, or accounting for, duty by persons engaging or proposing to engage as so mentioned at that place, including the refusal to any of the last-mentioned persons of access to that place unless the requirements of any regulations made by virtue of head (1) or head (2) above have been complied with; (4) otherwise provide for the giving of security by means of a deposit or otherwise for duty due or to become due: Sch 1 para 2(3). Such regulations may also in particular include provision for the furnishing to such persons or displaying in such manner of such information or records as the regulations may require by persons engaging, or proposing to engage, in any activity by reason of which they are or may be or become liable for duty, or would be or might be or become liable for duty if on-course bets were not excluded from duty, and by persons providing facilities for another to engage in such an activity or entering into any transaction with another in the course of any such activity of his: Sch 1 para 2(4)(a) (amended by the Finance Act 1987 s 3(4)).

As to the regulations currently in force see the General Betting Duty Regulations 2001, SI 2001/3088; and PARA 751 et seq.

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749. Bet-brokers.

Where (1) one person (the 'bettor') makes a bet¹ with another person (the 'bet-taker') using facilities provided in the course of a business, other than a betting-exchange business², by a third person (the 'bet-broker')³; or (2) one person (the 'bet-broker') in the course of a business makes a bet with another person (the 'bet-taker') as the agent of a third person (the 'bettor'), whether the bettor is a disclosed, or an undisclosed, principal⁴, then for the purposes of general betting duty⁵:

- 2680 (a) the bet is treated as if it were made by the bettor with the bet-broker and not with the bet-taker⁶;
- 2681 (b) the bet-broker is treated as a bookmaker in respect of the bet⁷;
- 2682 (c) the aggregate of amounts due to be paid by the bettor in respect of the bet is treated as being due to the bet-broker⁸; and
- 2683 (d) a sum paid by the bet-taker by way of winnings in respect of the bet is treated as having been paid by the bet-broker at that time for that purpose⁹.

The provisions described above do not, however, apply to bets made by way of pool betting¹⁰.

1 As to the meaning of 'bet' for these purposes see PARA 748 note 2.

2 For these purposes, 'betting-exchange business' means a business such as is mentioned in the Betting and Gaming Duties Act 1981 s 5AB(1) (see PARA 748 at head (4)): s 5C(1) (s 5C added by the Finance Act 2001 Sch 1; the Betting and Gaming Duties Act 1981 s 5C(1) amended by the Finance Act 2003 s 7(1), (4)).

3 Betting and Gaming Duties Act 1981 s 5C(1)(a) (as added and amended: see note 2). Where there is any doubt as to which of two persons is the bettor and which the bet-taker for these purposes, whichever of the two was the first to use the facilities of the bet-broker to offer the bet is treated as the bet-taker: Betting and Gaming Duties Act 1981 s 5C(6) (as so added).

4 Betting and Gaming Duties Act 1981 s 5C(1)(b) (as added: see note 2).

5 I.e. for the purposes of the Betting and Gaming Duties Act 1981 ss 2-5B (see PARA 748): Betting and Gaming Duties Act 1981 s 5C(2) (as added (see note 2); amended by the Finance Act 2003 ss 7(1), (4)(d), 216, Sch 43 Pt 1(1)).

6 Betting and Gaming Duties Act 1981 s 5C(2)(a) (as added: see note 2).

7 Betting and Gaming Duties Act 1981 s 5C(2)(b) (as added: see note 2). As to the meaning of 'bookmaker' see PARA 748 note 3.

8 Betting and Gaming Duties Act 1981 s 5C(2)(c) (as added: see note 2).

9 Betting and Gaming Duties Act 1981 s 5C(2)(c) (as added: see note 2).

10 Betting and Gaming Duties Act 1981 s 5C(5) (as added (see note 2); amended by the Finance Act 2007 Sch 25 Pt 2 paras 3, 6, Sch 27 Pt 6(3)). As to the meaning of 'pool betting' see PARA 313.

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B. CONDUCT OF BUSINESS AND METHODS OF PAYMENT

750. Commencement of business.

A person intending to carry on a general betting business¹ which is not also a pool betting business² must, not less than one week before he begins to carry on the business, notify the Commissioners for Revenue and Customs that he intends to carry it on³.

Any person intending to carry on a general betting business or a pool betting business must, not later than the date on which he first uses any premises or totalisator for the purposes of the business, make entry of those premises or that totalisator with the Commissioners⁴. He must also, not later than the date when he first uses any premises for the purposes of the business in connection with general betting operations⁵, notify the Commissioners of those premises being so used⁶.

1 'General betting business' means a business the carrying on of which involves, or may involve, any sums becoming payable by the person carrying on the business by way of general betting duty or would or might involve such sums becoming so payable if on-course bets were not excluded from the duty: Betting and Gaming Duties Act 1981 Sch 1 para 1 (amended by the Finance Act 1987 s 3(3)). As to general betting duty see PARAS 748, 749.

2 'Pool betting business' means a business the carrying on of which involves or may involve any sums becoming payable by the person carrying on the business by way of pool betting duty or would or might involve such sums becoming so payable if receipts from bets made for community benefit (as defined by the Betting and Gaming Duties Act 1981 s 8A: see PARA 753) were not excluded from that duty: Betting and Gaming Duties Act 1981 Sch 1 para 1 (amended by the Finance Act 2002 Sch 4 para 10). As to pool betting duty see PARAS 753-756.

3 Betting and Gaming Duties Act 1981 Sch 1 para 4(1). The day on which notification is made, as well as the day on which business is commenced, is excluded in computing the period of one week: *Thompson v Stimpson* [1961] 1 QB 195, [1960] 3 All ER 500, DC; *R v Long* [1960] 1 QB 681, [1959] 3 All ER 559, CCA. As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

4 Betting and Gaming Duties Act 1981 Sch 1 para 4(2) (amended by the Finance Act 2002 Sch 4 para 10). As to 'making entry' see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 627 et seq. The requirement to make entry is disappplied where the premises are used only in connection with general betting operations: Betting and Gaming Duties Act 1981 Sch 1 para 4(3).

5 'General betting operations' are betting operations which do not involve liability to pool betting duty: Betting and Gaming Duties Act 1981 Sch 1 para 1.

6 Betting and Gaming Duties Act 1981 Sch 1 para 4(3).

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751. Records.

Any person carrying on a general betting business¹ or a pool betting business² must:

- 2684 (1) keep such books, records and accounts, in relation to the business, in such form as the Commissioners for Revenue and Customs may direct³;
- 2685 (2) for at least six months⁴ preserve on specified premises⁵ such books, records and accounts as the Commissioners direct him to keep and any other books, records, accounts or documents relating to the business⁶;
- 2686 (3) permit any officer authorised in that behalf by the Commissioners to enter on any premises used for the purposes of the business⁷; and
- 2687 (4) permit any officer so authorised to inspect any totalisator used for the purposes of the business, and to inspect and take copies of any books, records, accounts or other documents in his possession or power or on any premises used for the purposes of the business, which are books, records, accounts or documents which relate or appear to relate to the business⁸.

Where a bookmaker⁹ employs an authorised agent for receiving or negotiating bets¹⁰ or otherwise conducting betting operations¹¹, the bookmaker must maintain at any of his premises to which such bets are transmitted¹² a record in such form and containing such particulars as the Commissioners may direct in respect of any person who is or has been at any time within the previous two months so authorised and by whom or on whose behalf such bets were transmitted to the bookmaker's business¹³. Entries and alterations in the record must be made not later than 6 pm on the day after the events to which they relate¹⁴.

An off-course bookmaker¹⁵ must not accept a bet unless he immediately makes a record of that bet in such form as the Commissioners have directed¹⁶. In the case of a bet placed by a person who is present, the bookmaker must immediately issue to that person a voucher bearing a record number which must be the same as the number used to identify the bet in the record made¹⁷. An on-course bookmaker is not required to comply with these provisions, unless he accepts an off-course bet¹⁸.

1 As to the meaning of 'general betting business' see PARA 750 note 1.

2 As to the meaning of 'pool betting business' see PARA 750 note 2.

3 Betting and Gaming Duties Act 1981 Sch 1 para 6(1)(a). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

4 The Commissioners may direct a shorter or longer period, either in any particular case, or in relation to any particular class of such books, records, accounts or documents: Betting and Gaming Duties Act 1981 Sch 1 para 6(1)(b), (3).

5 Books, records, accounts and other documents relating to general betting operations must be preserved on such of the premises used for the purposes of the business as the Commissioners may direct; and in any other case, books, records, accounts or documents must be preserved on the premises of which entry has been made with the Commissioners under the Betting and Gaming Duties Act 1981 Sch 1 para 4(2) (see PARA 750): Sch 1 para 6(2) (amended by the Finance Act 2002 ss 12(1), 141, Sch 4 para 10). As to the meaning of 'general betting operations' see PARA 750 note 5.

6 Betting and Gaming Duties Act 1981 Sch 1 para 6(1)(b).

7 Betting and Gaming Duties Act 1981 Sch 1 para 6(1)(c). In the case of a general betting business, the officer may remain on the premises at any time while they are being used, or when he has reasonable cause to believe that they are likely to be used, for conducting betting operations: Sch 1 para 6(1)(c). As to the meaning of 'officer' see PARA 746 note 5.

8 Betting and Gaming Duties Act 1981 Sch 1 para 6(1)(d).

9 As to the meaning of 'bookmaker' see PARA 748 note 3.

10 As to the meaning of 'bet' for these purposes see PARA 748 note 2.

11 This does not include bets or operations involving liability only to pool betting duty: Betting and Gaming Duties Act 1981 Sch 1 para 9(1). As to pool betting duty see PARAS 753-756.

12 The Commissioners may, if they think fit, allow some other place for the purpose: Betting and Gaming Duties Act 1981 Sch 1 para 9(2).

13 See the Betting and Gaming Duties Act 1981 Sch 1 para 9(1), (2). If a bookmaker uses more than one set of premises as a place to which agents may transmit bets, it would seem that he has to keep a separate record in respect of each. It seems that the date on which the authorised person ceased to be authorised is not included in the computation of the two months: see *Goldsmiths' Co v West Metropolitan Rly Co* [1904] 1 KB 1, CA; *Stewart v Chapman* [1951] 2 KB 792, [1951] 2 All ER 613, DC.

14 See the Betting and Gaming Duties Act 1981 Sch 1 para 9(3).

15 Is a person who intends to carry on or is carrying on bookmaking other than at a horse or dog race meeting: see the General Betting Duty Regulations 2001, SI 2001/3088, reg 3 (amended by SI 2003/2631). For these purposes, 'bookmaker' includes a person who is a bet-broker (as defined in the Betting and Gaming Duties Act 1981 s 5C(1): see PARA 749), and a person who is liable to pay duty by virtue of s 5B(4) (see PARA 748): General Betting Duty Regulations 2001, SI 2001/3088, reg 3.

16 See the General Betting Duty Regulations 2001, SI 2001/3088, reg 4(1). The direction referred to in the text is a direction made in accordance with the Betting and Gaming Duties Act 1981 Sch 1 para 6 (see the text and notes 1-8).

17 General Betting Duty Regulations 2001, SI 2001/3088, reg 4(2), (3).

18 General Betting Duty Regulations 2001, SI 2001/3088, reg 4(4). If he accepts an off-course bet, he must in relation to that bet comply with reg 4(1), (2), and within seven days of accepting it notify the Commissioners that he has accepted it: reg 4(5). An on-course bookmaker who has notified the Commissioners that he intends to accept off-course bets, and has not subsequently notified them that he does not intend to accept off-course bets, is not required to notify the Commissioners that he has accepted an off-course bet: reg 4(6).

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752. Returns and payment.

For the purpose of accounting for general betting duty¹, every bookmaker² must furnish the Commissioners for Revenue and Customs with a return by the fifteenth day following the end of the accounting period³ to which it relates⁴. An on-course bookmaker⁵ is not required to furnish returns unless he accepts an off-course bet⁶ in an accounting period⁷.

Not later than the fifteenth day following the end of an accounting period a bookmaker must pay to the Commissioners the duty due from him in respect of that accounting period⁸.

The Commissioners may require a bookmaker to provide security (by means of deposit or otherwise) for the payment of any duty that is or may become due from him⁹. Where a person provides facilities for bookmaking at the place where any event is to be held, and it comes to his attention that a bookmaker at that place is not complying with the provisions as to the keeping of records, returns or payments¹⁰, he must notify the Commissioners of the circumstances without delay¹¹.

1 As to general betting duty see PARAS 748-749.

2 As to the meaning of 'bookmaker' for these purposes see PARA 751 note 15.

3 As to the meaning of 'accounting period' see PARA 748 note 13 (definition applied by the General Betting Duty Regulations 2001, SI 2001/3088, reg 3 (amended by SI 2003/2631), subject to the General Betting Duty Regulations 2001, SI 2001/3088, regs 8, 10, 11 (see PARA 748 note 13)).

4 General Betting Duty Regulations 2001, SI 2001/3088, reg 5(1). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq. A return must be furnished (1) in a form specified in a notice published by the Commissioners and not withdrawn by a further notice, or in such form to the like effect as the Commissioners may approve (reg 5(2)); and (2) at the address specified on the form, or by such means as the Commissioners may approve (reg 5(3)).

5 'On-course bookmaker' means a person who intends to carry on or is carrying on bookmaking at a horse or dog race meeting: General Betting Duty Regulations 2001, SI 2001/3088, reg 3 (definition amended by SI 2003/2631).

6 'Off-course bet' means a bet that is not an on-course bet: General Betting Duty Regulations 2001, SI 2001/3088, reg 3. As to the meaning of 'on-course bet' see PARA 748 note 5.

7 General Betting Duty Regulations 2001, SI 2001/3088, reg 5(4), (5). If an on-course bookmaker accepts an off-course bet in an accounting period, he must furnish a return for that accounting period and for every subsequent accounting period: reg 5(5). However, an on-course bookmaker who has accepted off-course bets is not required to furnish a return for an accounting period if (1) he did not accept an off-course bet in that accounting period; (2) when furnishing his return in relation to an earlier accounting period he notified the Commissioners that he did not intend to accept off-course bets; and (3) since he so notified them he has not accepted an off-course bet: reg 5(6).

8 General Betting Duty Regulations 2001, SI 2001/3088, reg 6(1). Payment must be made in such manner as is specified in a notice published by the Commissioners and not withdrawn by a further notice, or in such manner as they may approve: reg 6(2). Where the manner of payment involves the collection of the duty due to the Commissioners by means of a direct debit, the bookmaker must ensure that he has sufficient funds in his account to satisfy the payment: reg 6(3).

9 General Betting Duty Regulations 2001, SI 2001/3088, reg 12(1).

- 10 le the provisions of the General Betting Duty Regulations 2001, SI 2001/3088, reg 4 (see PARA 751) or reg 5 or reg 6 (see the text and notes 1-8).
- 11 General Betting Duty Regulations 2001, SI 2001/3088, reg 12(2).

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(ii) Pool Betting Duty

753. Incidence of duty.

Pool betting duty is charged on a person's receipts if the amount of that person's net pool betting receipts for an accounting period¹ is greater than zero². The amount of duty is 15 per cent of the amount of the receipts³. Where the amount of a person's net pool betting receipts for an accounting period is a negative amount, that amount is to be carried forward to the following accounting period and, to the extent that it does not exceed it, deducted from the amount of the person's net pool betting receipts for that period⁴. If the amount of the net pool betting receipts for that following accounting period is not a positive amount, or is less than the amount carried forward, the amount carried forward or, as the case may be, the balance of it is to be treated for these purposes as if it were a negative amount of net pool betting receipts for that period⁵.

The amount of a person's net pool betting receipts for an accounting period is the sum of:

- 2688 (1) the aggregate of amounts⁶ falling due to the person⁷ in the accounting period in respect of dutiable pool bets ('S'); and
- 2689 (2) the aggregate of expenses and profits⁸ that are attributable to the accounting period ('E'),

minus the aggregate of amounts paid by the person in the accounting period by way of winnings⁹ on dutiable pool bets (irrespective of when the bets were made or determined) ('W')¹⁰.

For the purposes of a calculation of the amount of a person's net pool betting receipts for any accounting period, a bet¹¹, wherever made, is a 'dutiable pool bet' if the bet is made by way of pool betting and the following conditions are satisfied¹², namely that:

- 2690 (a) the bet is made by means of a totalisator situated in the United Kingdom¹³ and that person is the operator¹⁴, or that person is the promoter¹⁵ and is in the United Kingdom¹⁶; and
- 2691 (b) the bet is not made wholly in relation to horse racing or dog racing or for community benefit¹⁷.

1 For these purposes, an 'accounting period' is each period that ends with the last Saturday in a calendar month, and begins with the Sunday immediately following the previous such Saturday: Betting and Gaming Duties Act 1981 s 8B(1)(a) (ss 7A-7F, 8A-8C added by the Finance Act 2002 Sch 4 para 2). The Commissioners for Revenue and Customs may by regulations make provision for some other period to be an accounting period: Betting and Gaming Duties Act 1981 s 8B(1)(b) (as so added). Such regulations may make provision which applies generally or only in relation to a specified person or class of person, make different provision for different purposes, and make transitional provision: s 8B(2) (as so added). At the date at which this volume states the law, no such regulations had been made. As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

2 Betting and Gaming Duties Act 1981 ss 6, 7(1) (ss 6, 7, 8 substituted by the Finance Act 2002 Sch 4 para 2). As to the meaning of 'pool betting' see PARA 313.

3 Betting and Gaming Duties Act 1981 s 7(2) (as substituted: see note 2).

4 Betting and Gaming Duties Act 1981 s 7ZA(1), (2) (s 7ZA added by the Finance Act 2003 s 6(1), (5)).

5 Betting and Gaming Duties Act 1981 s 7ZA(3) (as added: see note 4).

6 Any payment that entitles a person to make a bet is, if he makes the bet, treated as stake money on the bet: Betting and Gaming Duties Act 1981 s 7C(1), (2) (as added: see note 1). All payments made (1) for or on account of or in connection with bets that are dutiable pool bets (see the text and notes 11-17) for the purposes of the calculation; (2) in addition to the stake money; and (3) by the persons making the bets, are treated as amounts due in respect of the bets except in so far as the contrary is proved by the person whose net pool betting receipts are being calculated: Betting and Gaming Duties Act 1981 s 7C(3) (as so added); and see *Customs and Excise Comrs v Top Ten Promotions Ltd* [1969] 3 All ER 39, [1969] 1 WLR 1163, HL.

7 Where a person makes a bet, and the bet relates to a single event, or to two or more events all taking place on the same day, any sum due to a person in respect of the bet is treated as falling due on the day on which the event or events take place: Betting and Gaming Duties Act 1981 s 7D(1), (2) (as added: see note 1). In any other case, when a person makes a bet, any sum due to a person in respect of the bet is treated as falling due when the bet is made: s 7D(3) (as so added). These provisions have effect in relation to a sum irrespective of when it is actually paid or required to be paid: s 7D(4) (as so added). The Commissioners may make regulations as to when any sum due to a person is treated as falling due for the purpose of calculating S: see s 7D(6)-(8) (as so added). At the date at which this volume states the law, no such regulations had been made. It seems that as pool betting duty is paid on amounts falling due it is now chargeable on unpaid credit debts: see *Customs and Excise Comrs v Pools Finance (1937) Ltd* [1952] 1 All ER 775.

8 The expenses and profits are those of the person whose net pool betting receipts are being calculated, and those of any other person concerned with or benefiting from the promotion of the betting concerned: Betting and Gaming Duties Act 1981 s 7E(1), (2) (as added: see note 1). Expenses and profits are not deductible so far as they are provided out of amounts due, in respect of bets that are dutiable pool bets (see the text and notes 11-17) for the purposes of the calculation, to the person whose net pool betting receipts are being calculated, or referable to matters other than: (1) the promotion or management of the betting concerned; or (2) activities ancillary to, or connected with, such promotion or management: s 7E(3) (as so added). The Commissioners may make regulations providing for the accounting period in which expenses and profits are to be treated as attributable for the purpose of calculating E: see s 7E(4), (5) (as so added). At the date at which this volume states the law, no such regulations had been made.

The words 'concerned with or benefiting from the promotion' must be construed as excluding those cases where the concern or the benefit arises not primarily from the betting or its promotion but from the circumstances that the 'other person' carries on some independent business in the ordinary course of which, and as part of which, he supplies goods or services to those who promote or manage the betting: *Customs and Excise Comrs v Top Ten Promotions Ltd* [1969] 3 All ER 39 at 92, [1969] 1 WLR 1163 at 1174, HL, per Lord Donovan.

9 The reference to paying an amount to a person includes a reference to holding it in an account if the person is notified that the amount is being held for him in the account and that he is entitled to withdraw it on demand: Betting and Gaming Duties Act 1981 s 7F(1), (2) (as added: see note 1). The return of a stake is treated as payment by way of winnings, and only payments of money are taken into account: s 7F(3), (4) (as so added). The Commissioners may make regulations providing for when amounts paid by way of winnings are to be treated as being paid for the purposes of calculating W: see s 7F(6), (7) (as so added). At the date at which this volume states the law, no such regulations had been made. Where a bet made before 31 March 2002 related to events at least one of which took place before that date and at least one of which takes place on or after that date, no account is to be taken of any payment by way of winnings on the bet: s 7F(5) (as so added). As to the meaning of 'winnings' see PARA 313 note 16.

10 Betting and Gaming Duties Act 1981 s 7A (as added: see note 1).

11 For these purposes, 'bet' does not include the taking of a ticket or chance in a lottery (Betting and Gaming Duties Act 1981 s 8C(1) (as added: see note 1)) nor does it include any bet made or stake hazarded in the course of, or incidentally to, any gaming (s 8C(3) (as so added), s 12(3)). As to the meaning of 'gaming' see PARA 748 note 2. Where payments are made for the chance of winning any money or money's worth on terms under which the persons making the payments have a power of selection that may (directly or indirectly) determine the winner, those payments are treated as bets even if the power is not exercised: s 8C(2) (as so added). Where any payment entitles a person to take part in a transaction that is, on his part only, not a bet made by way of pool betting by reason of his not making any stake as if the transaction were a bet, the transaction is treated as such a bet for the purposes of pool betting duty: s 8C(4) (as so added).

12 Betting and Gaming Duties Act 1981 s 7B(1) (as added: see note 1).

13 As to the meaning of 'United Kingdom' see PARA 16 note 8.

14 'Operator', in relation to bets made by means of a totalisator, means the person who, as principal, operates the totalisator: Betting and Gaming Duties Act 1981 s 12(4).

15 As to the meaning of 'promoter' see PARAS 313 note 19, 748 note 10.

16 Betting and Gaming Duties Act 1981 s 7B(2) (as added (see note 1); amended by the Finance Act 2004 ss 15(1), (4)(a), 326, Sch 42 Pt 1(2)).

17 Betting and Gaming Duties Act 1981 s 7B(3) (as added (see note 1); amended by the Finance Act 2004 s 15(1), (4)(b)). There is a third condition that if the bet was made before 31 March 2002, at least one event to which it related must take place on or after that date: Betting and Gaming Duties Act 1981 s 7B(4) (as so added).

A bet is made for community benefit if the promoter (or operator of a totalisator) of the betting is a community society or is bound to pay all benefits accruing from the betting to such a society, and the person making the bet knows, when making it, that the purpose of the betting is to benefit such a society: s 8A(1), (2) (as so added). The Commissioners may direct that any bet specified by the direction, or of a description so specified, is not a bet made for community benefit: s 8A(3) (as so added). Such a direction may not be made unless the Commissioners consider that an unreasonably large part of the amounts paid in respect of the bets concerned will, or may, be applied otherwise than in the payment of winnings or for the benefit of a community society: s 8A(4) (as so added). 'Community society' means a society established and conducted for charitable purposes only, or a society established and conducted wholly or mainly for the support of athletic sports or athletic games and not for private gain: s 8A(5) (as so added). 'Society' includes any club, organisation or association of persons, by whatever name called: s 8A(6) (as so added).

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754. Payment and recovery.

Pool betting duty charged on a person's net pool betting receipts for an accounting period¹ becomes due at the end of the period, is payable by that person and, subject to regulations specifying when and how pool betting duty is to be paid and any directions made², must be paid when it becomes due³. Pool betting duty due to be paid may be recovered from the following persons as if they were jointly and severally liable to pay it⁴:

- 2692 (1) the person on whose net pool betting receipts the duty is charged⁵;
- 2693 (2) a person responsible for the management of any business in the course of which any bets have been made that are dutiable pool bets⁶;
- 2694 (3) a person responsible for the management of any totalisator used for the purposes of any such business⁷; and
- 2695 (4) the director of any company falling within heads (1) to (3) above⁸.

Pool betting duty may also be recovered from anyone who holds himself out as available to collect particulars of bets⁹ and the stake money for transmission to a person by whom the duty would fall to be paid but who in fact fails to transmit the bets; in such a case the bet is deemed to have been made, but the duty is payable by the person who retained the stake money¹⁰.

1 As to the pool betting duty payable, and the calculation of net pool betting receipts, see PARA 753. As to the meaning of 'pool betting' see PARA 313; and as to the meaning of 'accounting period' see PARA 753 note 1.

2 The Commissioners for Revenue and Customs may direct the times at which pool betting duty is to be paid: Betting and Gaming Duties Act 1981 s 12(2), Sch 1 para 3 (amended by the Finance Act 2002 Sch 4 para 10, Sch 40 Pt 1(4)). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

3 Betting and Gaming Duties Act 1981 s 8(1) (s 8 substituted by the Finance Act 2002 Sch 4 para 2).

The Commissioners may by regulations make provision as to when pool betting duty is to be paid (including provision repealing the Betting and Gaming Duties Act 1981 Sch 1 para 3 (see note 2), and make provision as to how pool betting duty is to be paid: s 8(3) (as so substituted). Such regulations may make provision that applies generally or only in relation to a specified person or class of person, make different provision for different purposes, and make transitional provision: s 8(4) (as so substituted). At the date at which this volume states the law, no such regulations had been made.

4 Betting and Gaming Duties Act 1981 s 8(2) (as substituted: see note 3).

5 Betting and Gaming Duties Act 1981 s 8(2)(a) (as substituted: see note 3).

6 Betting and Gaming Duties Act 1981 s 8(2)(b) (as substituted: see note 3). As to the meaning of 'dutiable pool bets' see PARA 753.

7 Betting and Gaming Duties Act 1981 s 8(2)(c) (as substituted: see note 3).

8 Betting and Gaming Duties Act 1981 s 8(2)(d) (as substituted: see note 3). As to the application of the 1981 Act to limited liability partnerships see PARA 745 note 1.

9 As to the meaning of 'bet' see PARA 748 note 2.

10 Betting and Gaming Duties Act 1981 s 12(1). The person collecting the particulars of the bet and the stake money for it need not be a bookmaker: s 12(1). As to the meaning of 'bookmaker' see PARA 748 note 3.

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755. Permits.

No person may carry on a pool betting business¹ unless he holds a permit authorising him to do so granted by the Commissioners for Revenue and Customs in respect of any premises or totalisator in respect of which he has made entry² with the Commissioners³. The Commissioners must normally grant a permit within 14 days of the date of application for it⁴. They may at any time revoke such a permit if it appears to them that the holder is not carrying on a business for which such a permit is required, or is not using the premises or the totalisator in respect of which the permit was granted for the purposes of such a business⁵.

If a person carries on a business for which such a permit is required without such a permit he is guilty of an offence and liable, on summary conviction to a penalty of the prescribed sum or imprisonment for a term not exceeding six months or to both, or, on conviction on indictment, to a penalty of any amount or imprisonment for a term not exceeding two years, or to both⁶. If the offence continues after the conviction, a further offence is committed and the offender may be punished accordingly⁷.

If the holder of a permit fails to produce it for examination within such period, and at such time and place, as may be reasonably required by an officer of Revenue and Customs, he is liable to a civil penalty⁸.

1 As to the meaning of 'pool betting business' see PARA 750 note 2.

2 In accordance with the Betting and Gaming Duties Act 1981 Sch 1 para 4(2): see PARA 750.

3 Betting and Gaming Duties Act 1981 Sch 1 para 5(1) (Sch 1 para 5 amended by the Finance Act 2002 Sch 4 Pt 1 paras 1, 10(7)-(9)). As to making entry of premises and totalisators and giving notice in respect thereof see PARA 756. As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

4 Betting and Gaming Duties Act 1981 Sch 1 para 5(2) (as amended: see note 3).

5 Betting and Gaming Duties Act 1981 Sch 1 para 5(3) (amended by renumbering as such: see note 3).

6 Betting and Gaming Duties Act 1981 Sch 1 para 14(1) (amended by the Finance Act 2002 Sch 4 Pt 1 paras 1, 10(1), (13), Sch 40 Pt 1(4)). As to the prescribed sum see PARA 246 note 6. As to the liability of directors and other officers of bodies corporate see the Betting and Gaming Duties Act 1981 s 27; and PARA 757. As to the application of the 1981 Act to limited liability partnerships see PARA 745 note 1.

7 Betting and Gaming Duties Act 1981 Sch 1 para 14(2).

8 Betting and Gaming Duties Act 1981 Sch 1 para 14(3) (amended by the Finance Act 1994 Sch 4 para 62(2), Sch 26 Pt III). As to such civil penalties see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1218. As to the meaning of 'officer' see PARA 746 note 5.

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756. Administration and records.

Pool betting duty is under the care and management of the Commissioners for Revenue and Customs¹, and, in general, any person intending to use any premises or totalisator for the purpose of a pool betting business must first make entry of those premises or that totalisator with the Commissioners². The duties of a person carrying on a pool betting business in relation to the keeping of books, records and accounts and the producing of such documents to the Commissioners are the same as in the case of a general betting business³.

1 Betting and Gaming Duties Act 1981 Sch 1 para 2A(1) (Sch 1 para 2A added by the Finance Act 2002 Sch 4 para 10). As to the incidence of pool betting duty see PARA 753. As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

The Commissioners may make regulations providing for any matter for which provision appears to them to be necessary for administration or enforcement of pool betting duty or for the protection of the revenue from pool betting duty: Betting and Gaming Duties Act 1981 Sch 1 para 2A(2) (as so added). Such regulations may provide for payments on account or provide for the giving of security by means of a deposit or otherwise: Sch 1 para 2A(3) (as so added). At the date at which this volume states the law, no such regulations had been made.

2 See the Betting and Gaming Duties Act 1981 Sch 1 para 4(2). See also PARA 751. As to the meaning of 'pool betting business' see PARA 750 note 2. As to the provisions governing the making of entry of premises and articles see the Customs and Excise Management Act 1979 ss 108-111; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 627 et seq.

3 See PARA 751.

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(iii) Offences, Enforcement and Penalties

757. Offences and penalties in connection with betting duties.

If any person: (1) fails to pay any general betting duty¹ or pool betting duty² payable by him; or (2) contravenes or fails to comply with any of the statutory provisions relating to betting duties³, his failure to pay, contravention, or failure to comply attracts a civil penalty⁴, which, in the case of a failure to pay, is calculated by reference to the amount of duty payable⁵. Any person who obstructs any officer of Revenue and Customs in the exercise of his functions in relation to general betting duty or pool betting duty is liable on summary conviction to a penalty of level 4 on the standard scale⁶.

Any person who:

- 2696 (a) in connection with general betting duty or pool betting duty makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular⁷; or
- 2697 (b) in that connection, with intent to deceive, produces or makes use of any book, account, record, return or other document which is false in a material particular⁸; or
- 2698 (c) is knowingly concerned in, or in the taking of steps with a view to⁹, the fraudulent evasion by him or by any other person of general betting duty or pool betting duty¹⁰,

is guilty of an offence and liable on summary conviction to a penalty of the prescribed sum¹¹ or, if greater, treble the amount of the duty which is unpaid or payment of which is sought to be avoided, or to imprisonment for a term not exceeding six months, or to both¹², or on conviction on indictment, in the case of an offence within head (a) above, to a penalty of any amount or to imprisonment for a term not exceeding two years or to both¹³, and in the case of an offence within head (b) or head (c) above to a penalty of any amount or to imprisonment for a term not exceeding seven years or to both¹⁴.

Where a body corporate commits any such offence, every person who at the time of the offence was a director, general manager, secretary or other similar officer of the body corporate, or who was purporting to act in any such capacity, is deemed to be guilty of that offence unless he proves that it was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and in all the circumstances¹⁵.

The Commissioners for Revenue and Customs may make regulations applying, with any necessary adaptations, the provisions of the Stamp Duties Management Act 1891 (including the penal provisions repealed by the Forgery Act 1913) to payments on account of the general betting duty which are to be made by means of stamps¹⁶.

¹ As to general betting duty see PARA 748 et seq.

² As to pool betting duty see PARAS 753-756.

3 le the Betting and Gaming Duties Act 1981 Sch 1 paras 2, 2A, 4, 6-10 (see PARAS 750-751, 758), or any regulations made thereunder. As to the present regulations see PARAS 748, 751-752.

4 le a civil penalty under the Finance Act 1994 s 9: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1218.

5 Betting and Gaming Duties Act 1981 Sch 1 para 13(1) (Sch 1 para 13(1), (2) substituted, and Sch 1 para 13(2A) added, by the Finance Act 1994 Sch 4 para 60; and the Betting and Gaming Duties Act 1981 Sch 1 para 13(1) further amended by the Finance Act 2002 Sch 4 para 10). Any such failure to pay also attracts daily penalties: Betting and Gaming Duties Act 1981 Sch 1 para 13(2) (as so substituted).

6 Betting and Gaming Duties Act 1981 Sch 1 para 13(2A) (as added: see note 5). As to the standard scale see PARA 17 note 21. As to the meaning of 'officer' see PARA 746 note 5.

7 Betting and Gaming Duties Act 1981 Sch 1 para 13(3)(a) (amended by the Finance Act 1988 s 12(4)).

8 Betting and Gaming Duties Act 1981 Sch 1 para 13(3)(aa) (added by the Finance Act 1988 s 12(4)).

9 These words would seem to be of wider meaning than the word 'attempting', so that a preliminary step which would not be an attempt (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 79 et seq) might constitute an offence under this provision.

10 Betting and Gaming Duties Act 1981 Sch 1 para 13(3)(b).

11 As to the prescribed sum see PARA 246 note 6.

12 Betting and Gaming Duties Act 1981 Sch 1 para 13(3)(i).

13 Betting and Gaming Duties Act 1981 Sch 1 para 13(3)(ii), (4) (Sch 1 para 13(3)(ii) amended, and Sch 1 para 13(4) added, by the Finance Act 1988 s 12(4)).

14 See note 13.

15 Betting and Gaming Duties Act 1981 s 27 (amended by the Finance Act 1997 Sch 18 Pt II). This provision also applies to offences in connection with pool betting business permits under the Betting and Gaming Duties Act 1981 Sch 1 para 14: see PARA 755. As to the application of the 1981 Act to limited liability partnerships see PARA 745 note 1.

16 Betting and Gaming Duties Act 1981 Sch 1 para 2(3)(a). At the date at which this volume states the law, no such regulations were in force. As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

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758. Powers of entry and search.

Where, in the case of any track¹ or other premises, an officer of Revenue and Customs has reason to believe² that bookmaking³ on events taking place thereon is being or is to be carried on, or that a totalisator is being or is to be operated in connection with those events at a place on those premises or on any ground or premises adjacent to them, he is entitled for certain purposes to be admitted to that place without payment⁴. Those purposes are:

- 2699 (1) to require any person who appears to the officer to be, or to intend, carrying on bookmaking or operating a totalisator there to give such information as he may demand, and to produce to him any accounts, records or other documents which appear to the officer to be connected with the business of bookmaking or the operation of the totalisator, or which it appears to him will establish the identity of that person⁵; and
- 2700 (2) to require any person who appears to the officer to have made a bet there with any bookmaker or by means of a totalisator, to give such information with respect to the bet as the officer may demand, and to produce any document in connection with the bet supplied to him by the bookmaker or the operator of a totalisator, as the case may be⁶.

In respect of offences committed on or after 27 July 1989⁷ prosecutions by the Director of Revenue and Customs Prosecutions may be commenced:

- 2701 (i) in the case of an offence triable on indictment or either way, at any time within 20 years of the commission of the offence⁸; and
- 2702 (ii) in the case of a summary offence, at any time within three years of the commission of the offence⁹.

An officer who takes action under instruction from Revenue and Customs will not be guilty of an offence under the enactments relating to collection of duty¹⁰.

1 There is no longer a statutory definition of 'track' for these purposes. As to the meaning of 'track' for the purposes of the Gambling Act 2005 see PARA 372 note 8.

2 The officer, it seems, must in fact so believe: see *R v Banks* [1916] 2 KB 621, CCA; *R v Harrison* [1938] 3 All ER 134, CCA. As to the meaning of 'officer' see PARA 746 note 5.

3 There is no longer a statutory definition of 'bookmaking' for these purposes, but as to the meaning of 'bookmaker' see PARA 748 note 3.

4 Betting and Gaming Duties Act 1981 Sch 1 para 10(1) (amended by the Finance Act 2004 ss 15(1), (9), 326, Sch 42 Pt 1(2)).

5 See the Betting and Gaming Duties Act 1981 Sch 1 para 10(1)(a).

6 See the Betting and Gaming Duties Act 1981 Sch 1 para 10(1)(b). Similar provisions apply in respect of a person holding himself out as available to collect bets and transmit them to a bookmaker, where the officer has reason to believe that he has become liable to general betting duty by reason of his not having transmitted the bet: see Sch 1 para 10(2).

7 le the date on which the Finance Act 1989 was passed: s 16(4).

8 Customs and Excise Management Act 1979 s 146A(2), (7)(a) (s 146A added by the Finance Act 1989 s 16(1); the Customs and Excise Management Act 1979 s 146A(7)(a) substituted by the Commissioners for Revenue and Customs Act 2005 Sch 4 paras 20, 24); Betting and Gaming Duties Act 1981 s 35(2).

9 Customs and Excise Management Act 1979 s 146A(3), (7)(a) (as respectively added and substituted: see note 8); Betting and Gaming Duties Act 1981 s 35(2).

10 See the Betting and Gaming Duties Act 1981 s 31; and PARA 746.

UPDATE

758-759 Powers of entry and search, Charge to duty

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(3) GAMING DUTY

(i) The Charge to Duty and the Gaming Duty Register

759. Charge to duty.

Gaming duty is an excise duty charged¹ on premises² in the United Kingdom³ for every accounting period⁴ which contains a time when dutiable gaming⁵ takes place on those premises⁶.

Certain forms of gaming are excluded from the charge to gaming duty⁷, as is gaming which takes place on any premises in Great Britain of a members' club⁸ or miners' welfare institute⁹.

The imposition or payment of gaming duty does not make lawful any gaming which is otherwise unlawful¹⁰.

1 In accordance with the Finance Act 1997 s 11: see PARA 760.

2 As to the meaning of 'premises' see PARA 760 note 2.

3 As to the meaning of 'United Kingdom' see PARA 16 note 8.

4 As to the meaning of 'accounting period' see PARA 760 note 3.

5 'Dutiable gaming' means gaming by way of any of the following games: say, baccarat, punto banco, big six, blackjack, boule, casino hold 'em poker, casino stud poker, chemin de fer, chuck-a-luck, craps, crown and anchor, faro, faro bank, hazard, let it ride, pai gow poker, poker dice, pontoon, French roulette, American roulette, sic bo, super pan 9, Texas hold 'em bonus poker, three card poker, trente et quarante, two way Texas hold 'em casino poker, ultimate Texas hold 'em poker, vingt-et-un, and wheel of fortune, and any other game (by whatever name called) which is essentially similar to one of those games: Finance Act 1997 ss 10(2), (6), 15(3) (s 10(2) amended by the Finance Act 2002 s 11; and by SI 2007/2910).

'Gaming' has the same meaning as in the Betting and Gaming Duties Act 1981 (see PARA 748 note 2): Finance Act 1997 s 15(3) (definition substituted by the Finance Act 2007 Sch 25 Pt 4 paras 16, 19).

The Treasury may by order made by statutory instrument add to the games mentioned if it appears to it, having regard to the character of the game and the circumstances in which it is played, that it is appropriate to do so: Finance Act 1997 s 10(5). As to the exercise of this power see the Gaming Duty (Additional Games) Order 2007, SI 2007/2910, art 3; and as to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

6 See the Finance Act 1997 ss 10(1), 11(1). Gaming duty is chargeable on premises where dutiable gaming takes place on or after 1 October 1997: see s 10(1).

7 The Finance Act 1997 s 10 does not apply to any lawful gaming which is gaming to which any of the following provisions applies and which takes place in accordance with the requirements of that provision, ie (1) the Gambling Act 2005 Sch 15 Pt 1 (paras 1-5) (private parties: see PARA 648); (2) s 279 (premises licensed for the sale of liquor: see PARA 668); (3) Pt 13 (ss 288-294) (amusements with prizes: see PARAS 592, 673-675): Finance Act 1997 s 10(3) (amended by the Finance Act 2007 Sch 25 Pt 4 paras 16, 17(1), (2), Sch 27 Pt 6(3)). Nor does it apply: (a) to any gaming taking place by means of a machine that is an amusement machine for the purposes of the Betting and Gaming Duties Act 1981 (see PARA 771) (Finance Act 1997 s 10(3A)) (s 10(3A)-(3C) added by the Finance Act 2007 Sch 25 Pt 4 paras 16, 17(1), (3)); or (b) to any lawful gaming which consists of games played in Great Britain at an entertainment in respect of which all the payments made by the players (whether by way of entrance fee or stake or otherwise) are, after making permissible deductions from those payments, applied for a purpose other than that of private gain (within the meaning of the Gambling Act 2005:

see PARA 377 note 2) (Finance Act 1997 s 10(3B) (as so added). For the purposes of s 10(3B) (see head (b) above, only the following deductions are permissible deductions: (i) deductions on account of reasonable expenses incurred in providing the facilities for the purposes of the games; and (ii) deductions for the provision of prizes or awards in respect of the games: s 10(3C) (as so added).

8 Ie a members' club within the meaning of the Gambling Act 2005: see PARA 578.

9 Finance Act 1997 s 10(4) (amended by the Finance Act 2007 Sch 25 Pt 4 paras 16, 17(1), (4)). The reference in the text to a miners' welfare institute is a reference to such an institute within the meaning of the Gambling Act 2005 (see PARA 580); see the Finance Act 1997 s 10(4) (as so amended).

10 Finance Act 1997 s 15(4). As to legality and the enforceability of gaming debts see PARAS 327-329.

UPDATE

758-759 Powers of entry and search, Charge to duty

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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760. Rate of duty.

The amount of gaming duty¹ which is charged on any premises² for any accounting period³ is calculated by applying a specified rate of duty⁴ to the specified part of the gross gaming yield in that period from the premises, and aggregating the results⁵. The gross gaming yield from any premises in any accounting period consists of the aggregate of the gaming receipts⁶ for that period from those premises and, where a provider of the premises (or a person acting on his behalf) is banker in relation to any dutiable gaming taking place on those premises in that period, the banker's profits⁷ for that period from that gaming⁸.

Where dutiable gaming takes place on any premises during an accounting period but that gaming does not take place throughout that period, the duration of the dutiable gaming in that accounting period is treated as being the number of days from the first day⁹ on which dutiable gaming took place in that period until the last day on which it took place¹⁰, including both the first day and the last day¹¹.

Where, in an accounting period, unregistered gaming¹² takes place on any premises, the amount of gaming duty which is charged on those premises for that period is equal to 50 per cent of the gross gaming yield in that period from the premises¹³.

1 As to the charge to gaming duty see PARA 759.

2 'Premises' includes any place and any means of transport: Finance Act 1997 s 15(3). Where the Commissioners for Revenue and Customs are satisfied that dutiable gaming is, has been or may be taking place in the course of any accounting period (see note 3) at different premises situated at the same location or in very close proximity to each other, and that the activities carried on at those premises are connected or form part of the same business or are, or are comprised in, connected businesses, they may direct that for the purposes of gaming duty the different premises are to be treated as different parts of the same premises: s 11(6). Such a direction must be given in writing to a person who appears to the Commissioners to be a provider of the premises: Gaming Duty Regulations 1997, SI 1997/2196, reg 13(2). In the case of a registered provider, a direction must be sent to him at his address shown in the gaming duty register: reg 13(3). In any other case, a direction must be sent to a provider at one of the premises to which it relates: reg 13(4). A direction takes effect from the first day of the next accounting period following the day on which it was given, and, subject to the Finance Act 1997 s 11(7), remains in force until revoked by the Commissioners: Gaming Duty Regulations 1997, SI 1997/2196, reg 13(5), (6). In relation to any decision of the Commissioners to make or vary a direction under the Finance Act 1997 s 11(6), the Finance Act 1994 ss 14-16 (review and appeals) have effect as if that were a decision of a description specified in Sch 5 (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 1240 et seq, 1258 et seq): Finance Act 1997 s 11(7). As to the meaning of 'dutiable gaming' see PARA 759 note 5.

'Provider', in relation to any premises where gaming takes place, means any person having a right to control the admission of persons to those premises, whether or not he has a right to control the admission of persons to the gaming: s 15(3). As to the meaning of 'registered provider' see PARA 763 note 7. As to the gaming duty register see PARA 761; and as to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

3 'Accounting period' means, in the absence of a contrary agreement, a period of six months beginning with 1 April or 1 October: see the Finance Act 1997 s 15(3). Where, in the case of any premises, the Commissioners and every relevant person so agree, ss 10-15, Sch 1 (see PARA 761 et seq) have effect in relation to those premises as if the accounting periods for the purposes of those provisions were periods of six months beginning on such dates other than 1 October and 1 April as may be specified in the agreement: Sch 1 para 9(1). A person is a relevant person in relation to any premises if he is registered on the gaming duty register, and the entry relating to him on the register specifies those premises: Sch 1 para 9(2). The Commissioners must not enter into an agreement for a change in the date on which an accounting period begins in relation to any premises unless they are satisfied that appropriate transitional provision for the protection of the revenue is contained in the agreement, and such provision for the protection of the revenue in any such agreement must include any

provision as is contained in the regulations under s 11(5) (see the text and note 11): Sch 1 para 9(3), (4). In relation to any refusal of the Commissioners to enter into such agreement under Sch 1 para 9, or to enter into such an agreement on particular terms, the Finance Act 1994 ss 14-16 (review and appeals) have effect as if that refusal were a decision of a description specified in Sch 5 (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 1240 et seq, 1258 et seq): Finance Act 1997 Sch 1 para 9(5).

4 For the specified rates, which are amended annually, see the Finance Act 1997 s 11(2), Table (Table substituted by the Finance Act 2008 s 22).

5 See the Finance Act 1997 s 11(2).

6 The gaming receipts for an accounting period from any premises are the receipts in that period from charges made in connection with any dutiable gaming which has taken place on the premises other than so much of any charge as represents value added tax, and any charge the payment of which confers no more than an entitlement to admission to the premises: Finance Act 1997 s 11(9). See also note 9. As to value added tax generally see **VALUE ADDED TAX**.

7 The bankers' profits from any gaming is the amount (if any) by which the value, in money or money's worth, of the stakes staked with the banker in any such gaming exceeds the value of the prizes provided by the banker to those taking part in such gaming otherwise than on behalf of a provider of the premises: see the Finance Act 1997 s 11(10) (amended by the Finance Act 2007 Sch 25 Pt 4 paras 16, 18(1), (2)). The Betting and Gaming Duties Act 1981 s 20(2)-(6)(a) (expenditure on bingo winnings; valuation of prizes: see PARA 766) applies, with any necessary modifications, for the purposes of gaming duty as it applies for the purposes of bingo duty: s 11(10A) (added by the Finance Act 2007 Sch 25 Pt 4 paras 16, 18(1), (3)). The Treasury may by order made by statutory instrument amend the Finance Act 1997 s 11(8), (9), (10) or (10A): s 11(11) (amended by the Finance Act 2007 Sch 25 Pt 4 paras 16, 18(1), (4)). At the date at which this volume states the law, no such order had been made.

8 Finance Act 1997 s 11(8); and see s 11(11), cited in note 7.

9 If dutiable gaming did not take place on the last day of the preceding accounting period the first day on which it is to be treated as taking place is the first day on which it actually took place: Gaming Duty Regulations 1997, SI 1997/2196, reg 8(2). In any other case the first day on which the dutiable gaming is to be treated as taking place is the first day of the accounting period: reg 8(3).

10 The dutiable gaming is treated as ceasing on the last day on which it actually took place: Gaming Duty Regulations 1997, SI 1997/2196, reg 8(4). If it ceased at any time between midnight and four o'clock in the morning of the last day on which it actually took place it is treated as having ceased on the day before that day: reg 8(5).

11 See the Gaming Duty Regulations 1997, SI 1997/2196, regs 7(1), 8(1). This does not apply to any case where unregistered gaming takes place on premises in an accounting period (see the text and note 13): see reg 7(2). For the purpose of determining the amount of duty to be charged on the premises, each of the parts of the gross gaming yield specified are reduced by multiplying that part by the duration of the dutiable gaming and dividing the result by the number of days in the accounting period: reg 9. As to the making of regulations for these purposes see the Finance Act 1997 ss 11(5), 14(1).

12 For these purposes, 'unregistered gaming' takes place on premises in an accounting period if dutiable gaming takes place on those premises at any time in that period, and at that time those premises are not specified in the entry on the gaming duty register for a person by whom at that time they are notifiable for the purposes of the register under the Finance Act 1997 Sch 1 para 6 (see PARA 761): s 11(4).

13 Finance Act 1997 s 11(3) (amended by the Finance Act 2007 s 7(2), (3)).

UPDATE

760 Rate of duty

NOTES 2, 3--References to Finance Act 1994 ss 14-16 now to ss 13A-16; and for 'specified in Sch 5' read 'falling within s 13A(2)(j)': Finance Act 1997 s 11(7), Sch 1 para 9(5) (amended by SI 2009/56).

TEXT AND NOTE 4--The rates are now 15% on the first £1,929,000 of gross gaming yield, 20% on the next £1,329,500, 30% on the next £2,329,000, 40% on the next

£4,915,500 and 50% on the remainder: Finance Act 1997 s 11(2) (substituted by Finance Act 2009 s 19).

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/6. TAXATION OF GAMBLING/(3) GAMING DUTY/(i) The Charge to Duty and the Gaming Duty Register/761. The gaming duty register.

761. The gaming duty register.

The Commissioners for Revenue and Customs¹ must maintain a gaming duty register of persons involved with the provision of dutiable gaming². On receipt of a valid application³, made by a registrable person or a person who expects dutiable gaming to take place and to become a registrable person if it does, the Commissioners must add that person to the register⁴. The following are registrable persons:

- 2703 (1) the holder of a casino premises licence⁵ or a club gaming permit⁶ if and for so long as dutiable gaming takes place on the premises in respect of which that licence or permit is for the time being in force⁷;
- 2704 (2) a provider of unlicensed premises⁸ if and for so long as dutiable gaming takes place on those premises⁹; and
- 2705 (3) a person if and for so long as he is concerned in the organisation or management of any dutiable gaming that takes place on unlicensed premises¹⁰.

Where the Commissioners receive a valid notice¹¹ from a registered person¹² stating that he has ceased to be a registrable person, or that, from a time specified in the notice, he will cease to be a registrable person, he must be removed from the register¹³. Where a registered person has been added to the register because he expected dutiable gaming to take place, and the Commissioners receive a valid notice stating that such gaming which he expected to take place has not taken place and that he no longer expects it to take place, he must be removed from the register¹⁴. A person must also be removed from the register where it appears to the Commissioners that: (a) a registered person has ceased to be a registrable person¹⁵; or (b) a person has been added to the register because he expected dutiable gaming to take place and it appears to the Commissioners that such gaming has not taken place and can no longer be expected to take place¹⁶.

Certain premises must be specified in a registered person's entry on the register¹⁷. A person who makes an application to be added to the register must, on making that application, notify the Commissioners of all the premises which are notifiable¹⁸ by him, or, if he expects dutiable gaming to take place, will become notifiable by him if the expected gaming takes place, and the Commissioners must, on registering him on the register, cause those premises to be specified in his entry on the register¹⁹.

A body corporate cannot be a registrable person if it is a member of a group²⁰, but is not the representative member of that group²¹. An application may be made to the Commissioners for two or more bodies corporate to be treated as members of a group and for such one of them as is specified in the application to be the representative member for the purposes of registration from the date specified in the application²². Such an application with respect to bodies corporate must be made by one of those bodies or by the person controlling them, and must be made not less than 90 days before the date from which it is to take effect or at such later time as the Commissioners may allow²³.

¹ As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

- 2 Finance Act 1997 Sch 1 para 1. As to the meaning of 'dutiabale gaming' see PARA 759 note 5.
 - 3 A valid application is one which is made in such form and manner, and is accompanied by such information, as the Commissioners may require: Finance Act 1997 Sch 1 para 3(2), (3).
 - 4 Finance Act 1997 Sch 1 para 3(1).
 - 5 As to the meaning of 'casino premises licence' see PARA 460 at head (1) (this definition, and the definition referred to in note 6, applied by the Finance Act 1997 Sch 1 para 2(1) (amended for this purpose by the Finance Act 2007 Sch 25 Pt 4 paras 16, 20(1), (2))).
 - 6 As to the meaning of 'club gaming permit' see PARA 581 (definition as applied: see note 5).
 - 7 Finance Act 1997 Sch 1 paras 2(1), 3(2), (4)(a) (Sch 1 para 4(a) amended by the Finance Act 2007 Sch 25 Pt 4 paras 16, 20(1), (4)).
 - 8 For the purposes of the Finance Act 1997 Sch 1 Pt I, premises in the United Kingdom are 'unlicensed premises' unless they are premises in Great Britain in respect of which a casino premises licence or a club gaming permit is for the time being in force: Finance Act 1997 Sch 1 para 2(2) (amended by the Finance Act 2007 Sch 25 Pt 4 paras 16, 20(1), (3)). As to the meanings of 'United Kingdom' and 'Great Britain' see PARA 16 note 8.
 - 9 Finance Act 1997 Sch 1 paras 2(1), 3(2), (4)(b).
 - 10 Finance Act 1997 Sch 1 paras 2(1), 3(2), (4)(c).
 - 11 For these purposes, a 'valid notice' is one which is given in such form and manner, and accompanied by such information, as the Commissioners may require: Finance Act 1997 Sch 1 para 4(7).
 - 12 A 'registered person' means a person registered on the gaming duty register: Finance Act 1997 Sch 1 para 2(1).
 - 13 Finance Act 1997 Sch 1 para 4(1), (2), (3). In the case of a notice stating that a registered person will cease to be a registrable person from a specified time, he must be removed from the register with effect from that time: see Sch 1 para 4(3).
 - 14 Finance Act 1997 Sch 1 para 4(1), (4).
 - 15 Finance Act 1997 Sch 1 para 4(1), (5).
 - 16 Finance Act 1997 Sch 1 para 4(1), (6).
 - 17 Finance Act 1997 Sch 1 para 6(1). As to the meaning of 'premises' see PARA 760 note 2.
 - 18 For these purposes, in the case of a person who is not a body corporate, or who is a body corporate that is not a member of a group, the following cases are notifiable by him:
 - 131 (1) premises in respect of which a casino premises licence or club gaming permit is for the time being in force if and for so long as he is the holder of the licence or permit, and dutiable gaming takes place on those premises (Finance Act 1997 Sch 1 para 6(10)(a)) (Sch 1 paras 6(10)(a), (11)(a) amended by the Finance Act 2007 Sch 25 Pt 4 paras 16, 20(1), (5));
 - 132 (2) unlicensed premises of which he is provider if and for so long as dutiable gaming takes place on those premises (Finance Act 1997 Sch 1 para 6(10)(b)); and
 - 133 (3) unlicensed premises of which he is not a provider if and for so long as dutiable gaming takes place on those premises, and he is concerned in the organisation or management of that gaming (Sch 1 para 6(10)(c)).
- In the case of a body corporate which is the representative member of a group, the following premises are notifiable by it:
- 134 (a) premises in respect of which a casino premises licence or club gaming permit is for the time being in force if and for so long as it, or another body corporate which is a member of that group, is the holder of the licence or permit, and dutiable gaming takes place on those premises (Sch 1 para 6(11)(a) (as amended: see head (1) above));

- 135 (b) unlicensed premises of which the representative member or any such other body corporate is a provider if and for so long as dutiable gaming takes place on those premises (Sch 1 para 6(11)(b)); and
- 136 (c) unlicensed premises which are not notifiable by the representative member under head (b) above if and for so long as dutiable gaming takes place on those premises, and it or any other such body corporate is concerned in the organisation or management of that gaming (Sch 1 para 6(11)(c)).

As to when bodies corporate are entitled to be treated as members of a group see note 20.

19 Finance Act 1997 Sch 1 para 6(2). Where premises not currently notified by a registered person become notifiable by him, he must notify the Commissioners of those premises, and they must cause them to be specified in his entry on the register: Sch 1 para 6(3). Where any premises are currently notified by a registered person, and he notifies the Commissioners of the date on which those premises will cease to be notifiable by him, they must ensure that those premises cease to be specified in his entry on the register with effect from that date: Sch 1 para 6(6). Where any premises currently notified by a registered person cease to be notifiable by him, he must notify the Commissioners of that fact, unless either: (1) he notifies them that he has ceased to be a registrable person under Sch 1 para 4(2) (see the text and notes 11-13) (Sch 1 para 6(4)(a), (5)(a)); or (2) the premises ceasing to be notifiable by him so cease in accordance with a notification previously given by him to the Commissioners under Sch 1 para 6(6) (Sch 1 para 6(4)(a), (5)(b)). Where he notifies the Commissioners that any such premises cease to be notifiable by him, they must cause those premises to be no longer specified in his entry on the register: Sch 1 para 6(4)(b).

Where any premises are currently notified by a registered person who has been added to the register because he expected dutiable gaming to take place and to become a registrable person if it did (ie he was registered on an application made under Sch 1 para 3(1) (see the text and notes 1-4)), and (a) any of the dutiable gaming which he expected to take place has not taken place; (b) he no longer expects that gaming to take place; and (c) in consequence of heads (a) and (b) above, those premises have not and will not become notifiable by him, he must notify the Commissioners accordingly and they must cause those premises to be no longer specified in his entry on the register (Sch 1 para 6(7)), although a registered person is not required to notify the Commissioners in this way in a case where he gives notice to the Commissioners under Sch 1 para 4(4) (see the text and note 14) (Sch 1 para 6(8)).

For these purposes, premises are currently notified by any person at any time if at that time they are specified in his entry on the register: Sch 1 para 6(9).

20 Two or more bodies corporate are entitled to be treated as members of a group for the purpose of registration if each is resident or has an established place of business in the United Kingdom and: (1) one of them controls each of the others; (2) one person (whether a body corporate or an individual) controls all of them; or (3) two or more individuals carrying on business in partnership control all of them: Finance Act 2007 Sch 1 para 8(1). A body corporate is taken to control another body corporate if it is empowered by statute to control that body's activities, or it is the body's holding company within the meaning of the Companies Act 1985 s 736 (see **COMPANIES** vol 14 (2009) PARA 25); and an individual or individuals are taken to control a body corporate if (were he or they a company) he or they would be that body's holding company within the meaning of that Act: Finance Act 1997 Sch 1 para 8(10). Note that the Companies Act 1985 s 736 is prospectively repealed by the Companies Act 2006 Sch 16, and replaced by s 1159, as from a day to be appointed under s 1300(2); at the date at which this volume states the law, no such day had been appointed.

21 Finance Act 2007 Sch 1 para 3(2), (5). A body corporate which is the representative member of a group, and is not a registrable person in its own right, is a registrable person if another body corporate which is a member of that group would be a registrable person but for Sch 1 para 3(5): Sch 1 para 3(2), (6).

22 See the Finance Act 2007 Sch 1 para 8(2). The bodies corporate must be eligible to be treated as members of a group: see Sch 1 para 8(2). The Commissioners may refuse such an application if, and only if, it appears to them necessary to do so for the protection of the revenue from gaming duty: Sch 1 para 8(3). Where any bodies corporate are treated as members of a group for these purposes and an application for the purpose is made to the Commissioners, then, from such time as may be specified in the application: (1) a further body eligible to be so treated may be included among the bodies so treated; or (2) a body corporate may be excluded from the bodies so treated; or (3) another member of the group may be substituted as the representative member; or (4) the bodies corporate may no longer be treated as members of the group: Sch 1 para 8(4). If it appears to the Commissioners necessary to do so for the protection of the revenue from gaming duty, they may: (a) refuse any application under head (1) or head (3) above (see Sch 1 para 8(5)(a)); or (b) refuse any application under head (2) or head (4) above where: (i) a body corporate is treated as a member of a group for these purposes by virtue of being controlled by any person; and (ii) it appears to the Commissioners that it has ceased to be so controlled (see Sch 1 para 8(5)(b), (6)). Where the criteria in heads (i) and (ii) above apply, the Commissioners must by notice terminate that treatment from such date as may be specified in the notice: see Sch 1 para 8(6). Where such a notice is given to a body corporate, the Commissioners may substitute another member of the group as the representative member or, if there is only one other member,

cease to treat that other member as a member of the group, subject to any application by another body corporate made under these provisions: see Sch 1 para 8(7), (8). In relation to any refusal of the Commissioners of an application under Sch 1 para 8(2) or Sch 1 para 8(4), the Finance Act 1994 ss 14-16 (review and appeals) have effect as if that refusal were a decision of a description specified in Sch 5 (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 1240 et seq, 1258 et seq): Finance Act 1997 Sch 1 para 8(11).

23 Finance Act 1997 Sch 1 para 8(9). This also applies to any application to under Sch 1 para 8: see Sch 1 para 8(9). As to the computation of time see **TIME** vol 97 (2010) PARA 329 et seq.

UPDATE

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NOTE 20--Reference to Companies Act 1985 s 736 now to Companies Act 2006 s 1159, Sch 6 (see **COMPANIES** vol 14 (2009) PARA 25): Finance Act 1997 Sch 1 para 8(10) (amended by SI 2009/1890).

NOTE 22--Reference to Finance Act 1994 ss 14-16 now to ss 13A-16; and for 'specified in Sch 5' read 'falling within s 13A(2)(j)': Finance Act 1997 Sch 1 para 8(11) (amended by SI 2009/56).

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/6. TAXATION OF GAMBLING/(3) GAMING DUTY/(i) The Charge to Duty and the Gaming Duty Register/762. Liability to pay gaming duty.

762. Liability to pay gaming duty.

The liability to pay gaming duty¹ charged on any premises² for any accounting period³ is the joint and several liability of:

- 2706 (1) every person who is a provider⁴ of the premises at a time in that period when dutiable gaming⁵ takes place there⁶;
- 2707 (2) every person concerned in the organisation or management of any dutiable gaming taking place on those premises in that period⁷;
- 2708 (3) where any of the persons within heads (1) and (2) above is a body corporate that is treated as a member of a group⁸, every body corporate that is treated as a member of that group⁹; and
- 2709 (4) where any of the persons mentioned in head (1) to head (3) above is a body corporate, every director of that body¹⁰.

Where, during an accounting period, the registered provider of any premises changes, each registered provider is liable for the duty charged on the premises from the time that he first becomes a provider of the premises, and ceases to be liable for any further duty charged on the premises from the time that another person becomes the registered provider of the premises in substitution for him¹¹.

1 As to the charge to gaming duty see PARA 759.

2 As to the meaning of 'premises' see PARA 760 note 2.

3 As to the meaning of 'accounting period' see PARA 760 note 3.

4 As to the meaning of 'provider' see PARA 760 note 2. For these purposes, a person is conclusively presumed to be a provider of premises at any time if at that time he is registered on the gaming duty register, and those premises are specified in his entry on that register: Finance Act 1997 s 12(2). As to the gaming duty register see PARA 761.

5 As to the meaning of 'dutiable gaming' see PARA 759 note 5.

6 Finance Act 1997 s 12(1)(a).

7 Finance Act 1997 s 12(1)(b).

8 As to when bodies corporate are entitled to be treated as members of a group see PARA 761 note 20.

9 Finance Act 1997 s 12(1)(c).

10 Finance Act 1997 s 12(1)(d).

11 See the Gaming Duty Regulations 1997, SI 1997/2196, regs 10, 11(1). The amount of duty charged on the premises for which each registered provider is liable is determined in accordance with the provisions on calculating the duration of gaming that does not take place throughout an accounting period (see reg 9; and PARA 760 note 11): reg 11(2). As to the making of regulations for these purposes see the Finance Act 1997 ss 12(3), (4), (6), 14(1).

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763. Returns and payments on account.

The Commissioners for Revenue and Customs¹ may give directions as to the making of returns in connection with gaming duty² by persons registered on the gaming duty register³ and persons liable to pay any gaming duty⁴ in a notice published by them and not withdrawn by a further notice⁵.

For every quarter⁶, every registered provider⁷ must make a payment on account of the duty that is likely to be chargeable on any premises of which he is the provider⁸. The amount of any payment on account of duty is reckoned by calculating the gross gaming yield⁹ for the quarter (treating the quarter as an accounting period), applying a specified rate¹⁰ to the specified part of the gross gaming yield in that quarter from the premises, and aggregating the results¹¹. The aggregate is the amount of the payment on account¹². Provision is made for determining the amount of such a payment where dutiable gaming does not take place for the whole of the quarter¹³.

¹ As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

² As to the charge to gaming duty see PARA 759.

³ As to the gaming duty register see PARA 761.

⁴ As to the persons liable to pay gaming duty see PARA 762.

⁵ See the Finance Act 1997 s 13(1), Sch 1 para 10(1); and the Gaming Duty Regulations 1997, SI 1997/2196, reg 12. Such directions may, in particular, make provision as to: (1) when the returns are to be made; (2) the persons by whom they are to be made; (3) the form in which they are to be made; (4) the information to be given within them; (5) the declarations to be contained within them, and the manner in which they are to be authenticated; (6) returns being treated as not made until received by the Commissioners; and (7) the places to which they are to be made: Finance Act 1997 Sch 1 para 10(2).

⁶ 'Quarter' means the first three months of an accounting period: Gaming Duty Regulations 1997, SI 1997/2196, reg 2. As to the meaning of 'accounting period' see PARA 760 note 3.

⁷ 'Registered provider' means a person who is presumed to be the provider of premises because he is registered on the gaming duty register, and those premises are specified in his entry on that register: Finance Act 1997 s 12(2); Gaming Duty Regulations 1997, SI 1997/2196, reg 2. As to the meanings of 'provider' and 'premises' see PARA 760 note 2.

⁸ Gaming Duty Regulations 1997, SI 1997/2196, regs 3, 4.

⁹ As to the calculation of the gross gaming yield see PARA 760.

¹⁰ For the specified rates see the Gaming Duty Regulations 1997, SI 1997/2196, reg 5(4), Table (Table substituted by SI 2008/1949). The rates are amended annually.

¹¹ Gaming Duty Regulations 1997, SI 1997/2196, reg 5(1), (2), (3).

¹² Gaming Duty Regulations 1997, SI 1997/2196, reg 5(4).

¹³ See the Gaming Duty Regulations 1997, SI 1997/2196, reg 6.

UPDATE

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NOTE 10--SI 1997/2196, reg 5(4), Table now substituted by SI 2009/2049.

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(ii) Offences, Enforcement and Penalties

764. Offences and penalties.

Any person who obstructs any officer in the exercise of his functions in relation to gaming duty¹ is guilty of an offence². A person is also guilty of an offence who³:

- 2710 (1) in connection with gaming duty, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular⁴;
- 2711 (2) in connection with gaming duty, with intent to deceive, produces or makes use of any book, account, record, return or other document, which is false in a material particular⁵; or
- 2712 (3) is knowingly concerned in, or in the taking of steps with a view to⁶, the fraudulent evasion (by him or any other person) of any gaming duty or of any obligation to make a payment on account of gaming duty⁷.

Where a person has committed an offence under head (1), head (2) or head (3) above, all designated items⁸ related to the relevant gaming⁹ are liable to forfeiture if, at the time the offence was committed, that person was not registered on the gaming duty register¹⁰, and the relevant gaming did not take place on premises which, at the time the offence was committed, were specified in any person's entry on that register¹¹.

A civil penalty¹² may be imposed on any person who fails to:

- 2713 (a) pay any amount of gaming duty due from him¹³;
- 2714 (b) notify the Commissioners for Revenue and Customs¹⁴ of any premises to be specified in a registered person's entry on the gaming register which are notifiable by him, or to notify them of any fact¹⁵;
- 2715 (c) comply with any provision of a direction given by the Commissioners¹⁶ as to the making of returns¹⁷; or
- 2716 (d) comply with any provision of any regulations made¹⁸ for the administration or enforcement of gaming duty or for the protection of the revenue from that duty¹⁹.

A civil penalty may also be imposed on every person who is a responsible person²⁰ in relation to any premises if dutiable gaming takes place on those premises and, at the time the gaming takes place, no person by whom those premises are notifiable is registered on the register²¹.

1 As to the charge to gaming duty see PARA 759.

2 Finance Act 1997 Sch 1 para 12(1). A person guilty of such an offence is liable, on summary conviction, to a penalty of level 5 on the standard scale: see Sch 1 para 12(1). As to the standard scale see PARA 17 note 21.

Where any of the offences under Sch 1 para 12(1), (2) has been committed by a body corporate, every person who was at the date of the commission of the offence a director, general manager, secretary or other similar officer of that body, or was purporting to act in any such capacity, is deemed to be guilty of that offence unless he proves that he did not consent to, or connive at, the commission of the offence and that he exercised all

such diligence to prevent it as he ought to have exercised having regard to the nature of his functions in that capacity and in all the circumstances: see Sch 1 para 12(4), applying the Betting and Gaming Duties Act 1981 s 27 (see PARA 757).

3 Finance Act 1997 Sch 1 para 12(2). A person guilty of such an offence is liable: (1) on summary conviction, to a penalty of the statutory maximum or, if greater, three times the duty or other amount which is unpaid or the payment of which is sought to be avoided, or to imprisonment for a term not exceeding six months, or to both; or (2) on conviction on indictment to a penalty of any amount, or to imprisonment for a term not exceeding two years in the case of an offence under head (1) in the text, or seven years in any other case, or to both: Sch 1 para 12(3). As to offences by bodies corporate see note 2. As to the statutory maximum see PARA 247 note 13.

4 Finance Act 1997 Sch 1 para 12(2)(a).

5 Finance Act 1997 Sch 1 para 12(2)(b).

6 These words would seem to be of wider meaning that the word 'attempting' so that a preliminary step which would not be an attempt (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 79 et seq) might constitute an offence under these provisions.

7 Finance Act 1997 Sch 1 para 12(2)(c).

8 The designated items related to any gaming are: (1) any furniture, machines and other articles and equipment which are on the premises where the gaming takes place and have been or are being, or are capable of being, used for or in connection with gaming; and (2) cash and gaming chips in the custody of, or under the control of, any person who is a provider of the premises on which the gaming takes place, or is in any way concerned with the organisation and management of the gaming (including all cash and gaming chips in play or left on a gaming table on those premises): Finance Act 1997 Sch 1 para 12(7), (8). As to the meanings of 'provider' and 'premises' see PARA 760 note 2.

9 'Relevant gaming' means, in relation to an offence under head (1) or head (2) in the text, any gaming to which the false statement or (as the case may be) the false document related, and in relation to an offence under head (3) in the text, any gaming on the premises the gaming duty on which was, or was sought to be, fraudulently evaded: Finance Act 1997 Sch 1 para 12(6).

10 As to the gaming duty register see PARA 761.

11 Finance Act 1997 Sch 1 para 12(5).

12 Ie under the Finance Act 1994 s 9: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1218.

13 See the Finance Act 1997 s 12(5)(a). This includes failure to make a payment on account (see PARA 763): see s 12(6)(c). The penalty is calculated by reference to the amount that has not been paid: s 12(5)(a). Daily penalties may also be imposed: see s 12(5)(b). As to the liability to pay gaming duty see PARA 762.

14 As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

15 See the Finance Act 1997 Sch 1 para 7. Daily penalties may also be imposed: see Sch 1 para 7. As to the duty to notify the Commissioners of premises to be specified in a registered person's entry on the gaming register see Sch 1 para 6(2), (3), (4), (7); and PARA 761 note 19. As to the gaming duty register see PARA 761; and as to the meaning of 'registered person' see PARA 761 note 12.

16 Ie under the Finance Act 1997 Sch 1 para 10: see PARA 763.

17 See the Finance Act 1997 Sch 1 para 10(3). Daily penalties may also be imposed: see Sch 1 para 10(3).

18 Ie under the Finance Act 1997 Sch 1 para 11. See the Gaming Duty Regulations 1997, SI 1997/2196; and PARAS 760-763.

19 See the Finance Act 1997 Sch 1 para 11(3).

20 A person is a responsible person in relation to any premises if he is a registrable person and those premises are notifiable by him: Finance Act 1997 Sch 1 para 5(2). As to the meaning of 'registrable person' see PARA 761. As to the premises which are notifiable by a person see Sch 1 para 6; and PARA 761 text and notes 17-19.

21 See the Finance Act 1997 Sch 1 para 5(1), (3), (4).

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765. Disclosure of information.

No obligation as to secrecy or other restriction on the disclosure of information imposed by statute or otherwise prevents the Commissioners for Revenue and Customs¹, or their authorised officer², from disclosing information to the Gambling Commission³ or its authorised officer, or the Gambling Commission or its authorised officer from disclosing information to the Commissioners, or to their authorised officer, for the purpose of assisting the Commissioners in the carrying out of their functions with respect to gaming duty⁴ or, as the case may be, that Commission in carrying out its statutory⁵ functions⁶.

1 As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

2 'Officer' see means, subject to the Customs and Excise Management Act 1979 s 8(2) (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 904), a person commissioned by the Commissioners: s 1(1) (definition applied by the Finance Act 1997 s 15(2)).

3 As to the Gambling Commission see PARA 4.

4 As to the charge to gaming duty see PARA 759.

5 I.e. its functions under the Gambling Act 2005: see PARAS 335-343.

6 See the Finance Act 1997 Sch 1 para 14(1) (amended by the Finance Act 2007 Sch 25 Pt 4 paras 16, 20(1), (6)). Information obtained by virtue of a disclosure authorised under these provisions must not be disclosed except: (1) to the Commissioners or to the Gambling Commission, or to an authorised officer of the Commissioners or the Gambling Commission; or (2) for the purposes of any proceedings connected with a matter in relation to which the Commissioners carry out their functions with respect to gaming duty or the Gambling Commission carries out its functions under the Gambling Act 2005: see the Finance Act 1997 Sch 1 para 14(2) (as so amended). As to the functions of the Commissioners in relation to gaming duty see PARA 760 et seq.

UPDATE

765-767 Disclosure of information ... Exemptions from duty

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(4) BINGO DUTY

(i) Charge, Payment and Exemptions

766. Charge to, and payment of, duty.

Bingo duty is an excise duty charged, subject to certain exceptions¹, on the playing of bingo² in the United Kingdom³. The duty is charged at the rate of 15 per cent of a person's bingo promotion⁴ profits for an accounting period⁵.

The amount of a person's bingo promotion profits is the amount of that person's bingo receipts for the accounting period, minus the amount of his expenditure on bingo winnings for the period⁶. A person has bingo receipts for an accounting period if payments fall due in the period in respect of entitlement to participate in bingo⁷ promoted by him, and the amount of his bingo receipts in the period is the aggregate of those payments⁸. A person's expenditure on bingo winnings for an accounting period is the aggregate of the values of prizes provided by him in that period by way of winnings at bingo promoted by him⁹.

Where the amount that would be charged in respect of a person's bingo promotion profits for an accounting period is less than £1, no duty is charged¹⁰. Where the calculation of a person's bingo promotion profits for an accounting period results in a negative amount, no bingo duty is chargeable in respect of that period, and the amount of the person's expenditure on bingo winnings for the next period is increased by the amount of the loss¹¹.

Bingo duty charged in respect of a person's bingo promotion profits must be paid by that person¹².

In relation to combined bingo played entirely in the United Kingdom:

- 2717 (1) payments made in respect of entitlement to participate are to be treated as bingo receipts only of the first promoter to whom, or at whose direction, they are paid¹³; and
- 2718 (2) where money representing stakes hazarded at combined bingo is paid in an accounting period by one promoter of the bingo ('the first promoter') to another ('the second promoter'), the money is not to be treated as a bingo receipt of the second promoter for these purposes¹⁴.

A game of bingo is 'combined bingo' if it is played in more than one place and promoted by more than one person¹⁵. In relation to combined bingo played entirely in the United Kingdom where money representing stakes hazarded at combined bingo is paid in an accounting period by one promoter of the bingo ('the first promoter') to another ('the second promoter'):

- 2719 (a) the payment is to be treated as expenditure of the first promoter on bingo winnings for the accounting period for these purposes¹⁶; and
- 2720 (b) no subsequent payment of all or part of the money is to be treated as expenditure on bingo winnings for these purposes, whether paid by the second promoter to another person, by the first promoter having received it from the second promoter, or otherwise¹⁷.

1 As to the specified exemptions see the Betting and Gaming Duties Act 1981 Sch 3 paras 1-7; and PARA 767.

2 'Bingo' includes any version of that game, whatever name it is called: Betting and Gaming Duties Act 1981 s 20C(2) (ss 20A-20C added by the Finance Act 2003 s 9(1)).

3 Betting and Gaming Duties Act 1981 s 17(1)(a) (ss 17-20 substituted by the Finance Act 2003 s 9(1)). For the purposes of the provisions on bingo duty, 'United Kingdom' includes the territorial sea of the United Kingdom: Betting and Gaming Duties Act 1981 s 20C(2) (as added: see note 2). As to the meaning of 'United Kingdom' generally see PARA 16 note 8. As to the territorial sea of the United Kingdom see **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

4 The promoter of a game of bingo (except in relation to combined bingo: see the text and notes 16-17) is, in the case of licensed bingo, the holder of the licence, and in the case of unlicensed bingo, the person who provides the facilities for the game: Betting and Gaming Duties Act 1981 s 20C(3) (as added: see note 2). 'Licensed bingo', in Great Britain, means bingo played at premises licensed under a bingo premises licence; and 'bingo premises licence' has the same meaning as in the Gambling Act 2005 Pt 8 (ss 150-215, Sch 9: see PARA 460 et seq): Betting and Gaming Duties Act 1981 s 20C(2) (as so added; definitions substituted by the Finance Act 2007 Sch 25 Pt 2 paras 3, 9(1), (3)). As to bingo premises licences see PARA 460 at head (2).

5 Betting and Gaming Duties Act 1981 s 17(1)(b) (as substituted: see note 3). For these purposes, an accounting period ends, and another begins, at the end of the last Sunday in each calendar month: s 18(1) (as so substituted). However, regulations made under Sch 3 para 9 (see PARA 768) may make provision in place of s 18(1) for the purposes of applying s 17 to specified persons or in specified circumstances, and such regulations may also make transitional provision: s 18(2), (3) (as so substituted). At the date at which this volume states the law, no such regulations had been made.

6 Betting and Gaming Duties Act 1981 s 17(3) (as substituted: see note 3).

7 An entitlement to participate in a game of bingo includes an opportunity to participate in a game of bingo in respect of which a charge is made (whether by way of a fee for participation, a stake, or both): Betting and Gaming Duties Act 1981 s 20C(5) (as added: see note 2).

8 Betting and Gaming Duties Act 1981 s 19(1), (2) (as substituted: see note 3). For these purposes: (1) an amount in respect of entitlement to participate in a game of bingo is to be treated as falling due in the accounting period in which the game is played; (2) where a payment relates to a supply of services on which value added tax is chargeable, the amount of value added tax chargeable is to be disregarded (irrespective of whether or not that amount is paid by way of value added tax); (3) it is immaterial whether an amount falls due to be paid to the promoter or to another person; (4) it is immaterial whether an amount is described as a fee for participation, as a stake, or partly as one and partly as the other; and (5) where a sum is paid partly in respect of entitlement to participate in a game of bingo and partly in respect of another matter, then such part of the sum as is applied to, or properly attributable to, entitlement to participate in the game is to be treated as an amount falling due in respect of entitlement to participate in the game, and the rest is disregarded: s 19(3) (as so substituted). As to value added tax generally see **VALUE ADDED TAX**.

9 Betting and Gaming Duties Act 1981 s 20(1) (as substituted: see note 3). The following rules apply to the calculation of the value of a prize for these purposes:

137 (1) where a prize is obtained by the promoter from a person not connected with him, the cost to the promoter is to be treated as the value of the prize (s 20(2) (as so substituted));

138 (2) where a prize is a voucher which (a) may be used in place of money as whole or partial payment for benefits of a specified kind obtained from a specified person; (b) specifies an amount as the sum or maximum sum in place of which the voucher may be used; and (c) does not fall within head (1) above, the specified amount is the value of the voucher (s 20(3) (as so substituted));

139 (3) where a prize is a voucher (whether or not it falls within head (2) above), it is to be treated as having no value if it does not satisfy heads (2)(a) and (2)(b) above, or its use as described in head (2)(a) above is subject to a specified restriction, condition or limitation which may make the value of the voucher to the recipient less than the amount specified as the sum or maximum sum in place of which the voucher may be used (s 20(4) (as so substituted));

140 (4) in the case of a prize which is neither money nor a voucher and does not fall within head (1) above, the value of the prize is the amount which the prize would cost the promoter if obtained from a person not connected with him, or, if no such amount can reasonably be determined, then nil: (s 20(5) (as so substituted)).

For these purposes, a reference to a connection between two persons is to be construed in accordance with the Income and Corporation Taxes Act 1988 s 839 (see **INCOME TAXATION** vol 23(2) (Reissue) PARA 1258); Betting and Gaming Duties Act 1981 s 20(6)(a) (as so substituted). An amount paid by way of value added tax on the acquisition of a thing is to be treated as part of its cost, irrespective of whether or not the amount is taken into account for the purpose of a credit or refund: s 20(6)(b) (as so substituted). 'Prize' means anything won at bingo: s 20C(2) (as added: see note 2).

10 Betting and Gaming Duties Act 1981 s 17(5) (as substituted: see note 3).

11 Betting and Gaming Duties Act 1981 s 20B(1) (as added: see note 2). This provision applies to an accounting period whether or not the loss results wholly or partly from the previous application of that provision: s 20B(2) (as so added).

12 Betting and Gaming Duties Act 1981 s 17(4) (as substituted: see note 3).

13 Betting and Gaming Duties Act 1981 s 20A(2), (4) (as added: see note 2).

14 Betting and Gaming Duties Act 1981 s 20A(2), (3)(a) (as added: see note 2).

15 Betting and Gaming Duties Act 1981 s 20A(1) (as added (see note 2); amended by the Finance Act 2007 ss 105, 114, Sch 25 Pt 2 paras 3, 8, Sch 27 Pt 6(3)). For these purposes, a person promotes a game of bingo if he is wholly or partly responsible for organising it or providing facilities for it: Betting and Gaming Duties Act 1981 s 20C(4) (as so added).

16 Betting and Gaming Duties Act 1981 s 20A(3)(b), (4) (as added: see note 2).

17 Betting and Gaming Duties Act 1981 s 20A(3)(c), (4) (as added: see note 2).

UPDATE

765-767 Disclosure of information ... Exemptions from duty

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

766 Charge to, and payment of, duty

TEXT AND NOTE 4--Rate now 22%: Betting and Gaming Duties Act 1981 s 17(1)(b) (amended by Finance Act 2009 s 20(2)).

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767. Exemptions from duty.

In calculating liability to bingo duty, no account is taken of:

- 2721 (1) bingo¹ played in a private dwelling on a domestic occasion²;
 - 2722 (2) non-profit-making bingo³;
 - 2723 (3) small-scale bingo played at commercial entertainments complying with certain conditions⁴ if it is played:
- 205
- 327. (a) on any family entertainment centre⁵;
 - 328. (b) on any premises in respect of which there is for the time being in force both an amusement machine licence under the Betting and Gaming Duties Act 1981⁶ and an adult gaming centre premises licence⁷ issued under Part 8⁸ of the Gambling Act 2005⁹;
 - 329. (c) at a pleasure fair consisting wholly or mainly of amusements provided by travelling showmen, which is held on any day of the year on premises not previously used in that year for more than 27 days for the holding of such a pleasure fair¹⁰.
- 206

In the following types of small-scale bingo, neither payments in respect of entitlement to participate¹¹ nor winnings are brought into account:

- 2724 (i) small-scale bingo where entitlement to participate in non-licensed bingo¹² depends on a person's being:
- 207
- 330. (A) a member of a group or organisation;
 - 331. (B) a guest of such a member; or
 - 332. (C) a guest of a group or organisation¹³;
- 208
- 2725 (ii) other non-licensed bingo, not falling within head (i) above, subject to financial limits in respect of the winnings and stakes involved¹⁴.

1 As to the meaning of 'bingo' see PARA 766 note 2.

2 Betting and Gaming Duties Act 1981 s 17(1), Sch 3 para 1 (amended by the Finance Act 2003 s 9(2)).

3 See the Betting and Gaming Duties Act 1981 Sch 3 para 2B(1) (added by the Finance Act 2003 s 9(4); substituted by the Finance Act 2007 Sch 25 Pt 2 paras 3, 12(1), (2)). 'Non-profit-making bingo' means bingo (1) in respect of the playing of which no charge in money or money's worth is made; and (2) in respect of which no levy is charged on any of the stakes or on the winnings of any of the players (irrespective of the means by which the levy is charged); and it does not matter whether the charge or levy is compulsory, customary or voluntary: Betting and Gaming Duties Act 1981 Sch 3 para 2B(2) (as so substituted). In Sch 3 para 2B(2)(a) (see head (1) above), 'charge' includes an admission charge, but does not include (a) any payment of the whole or any part of an annual subscription to a club; (b) any payment of an entrance subscription for membership of a club; or (c) any stakes hazarded: Sch 3 para 2B(3) (as so substituted). For these purposes, 'club' means a club which is so constituted and conducted, in respect of membership and otherwise, as not to be of a temporary character, and 'membership of a club' does not include temporary membership of a club: Sch 3 para 2B(4) (as so substituted).

4 See the Betting and Gaming Duties Act 1981 Sch 3 para 5(1) (amended by the Finance Act 2003 s 9(5)). The conditions are that: (1) that the amount payable by any person for a card for any one game of bingo does

not exceed £1; (2) the total amount taken as payment by the players for their cards for any one game does not exceed £500; (3) no money prize exceeding £50 is distributed or offered; (4) the winning of, or the purchase of a chance to win, a prize does not entitle any person (whether subject to a further payment by him or not) to any further opportunity to win money or money's worth by taking part in any gaming or in any lottery; and (5) in the case of a pleasure fair, the opportunity to play bingo is not the only, or the only substantial, inducement to persons to attend the fair: Betting and Gaming Duties Act 1981 Sch 3 para 5(2) (amended by SI 1995/2374; SI 2007/2152). As to the meaning of 'prize' see PARA 766 note 10.

The Commissioners for Revenue and Customs may by order provide that any provision of the Betting and Gaming Duties Act 1981 Sch 3 Pt I (paras 1-7) which is specified in the order and which mentions a sum is to have effect (whether as from a date so specified or in relation to events taking place on or after a date so specified) as if for that sum there were substituted such larger sum as may be specified in the order: Sch 3 para 7. As to the exercise of this power see the orders amending Sch 3 para 5(2) which are cited above.

5 See the Betting and Gaming Duties Act 1981 Sch 3 para 5(1)(a) (amended by the Finance Act 2007 Sch 25 Pt 2 paras 3, 12(1), (3)(a)). The reference in the text to a family entertainment centre is to a family entertainment centre within the meaning of the Gambling Act 2005 (see s 238; and PARA 349 note 15): see the Betting and Gaming Duties Act 1981 Sch 3 para 5(1)(a) (as so amended).

6 As to amusement machine licences see PARA 771 et seq.

7 As to the meaning of 'adult gaming centre premises licence' see PARA 460 at head (3).

8 Ie under the Gambling Act 2005 Pt 8 (ss 150-215, Sch 9): see PARA 460 et seq.

9 See the Betting and Gaming Duties Act 1981 Sch 3 para 5(1)(b) (amended by the Finance Act 1995 Sch 3 para 10; the Finance Act 2007 Sch 25 Pt 2 paras 3, 12(1), (3)(b)).

10 Betting and Gaming Duties Act 1981 Sch 3 Pt I para 5(1)(c).

11 As to the meaning of 'entitlement to participate' see PARA 766 note 7.

12 As to the meaning of 'licensed bingo' see PARA 766 note 4.

13 Betting and Gaming Duties Act 1981 Sch 3 para 2 (substituted by the Finance Act 1982 Sch 6 Pt IV para 5(2)).

14 Payments in respect of entitlement to participate in the non-licensed bingo and winnings at the non-licensed bingo are not brought into account unless: (1) on a day winnings at non-licensed bingo promoted by a person exceed £500; (2) stakes exceeding £500 in aggregate are hazarded on a day at non-licensed bingo promoted by a person; (3) in an accounting period, winnings at non-licensed bingo promoted by a person exceed £7,500; or (4) stakes exceeding £7,500 are hazarded in an accounting period at non-licensed bingo promoted by a person: Betting and Gaming Duties Act 1981 Sch 3 para 2A (added by the Finance Act 2003 s 9(3)). See also Sch 3 para 7, cited in note 4.

UPDATE

765-767 Disclosure of information ... Exemptions from duty

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

767 Exemptions from duty

NOTE 4--Head (3). For '£50' read '£70': Betting and Gaming Duties Act 1981 Sch 3 para 5(2)(amended by Finance Act 2009 s 20(3)).

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(ii) Administration and Enforcement

768. Administration of bingo duty and registration of bingo-promoters.

Bingo duty¹ is under the care and management of the Commissioners for Revenue and Customs², who may make regulations providing for any matter which appears to them to be necessary for the administration or enforcement of bingo duty or for the protection of the revenue in respect of that duty³. They may also make regulations as to who is to account for bingo duty, and the times and manner of payment⁴.

Any person who intends to promote the playing of bingo in connection with which bingo duty may be chargeable must, not less than 14 days⁵ before the first day on which bingo is to be played, notify the Commissioners of his intention, specifying the premises on which the bingo is to be played, and applying to be registered as a bingo-promoter⁶. On giving notice to the Commissioners of his intention⁷, the person is entitled to be registered, but the Commissioners may, when it appears to them necessary for the security of the revenue to do so, make it a condition of registration or of the continuance of registration that he must give such security (or further security) by way of deposit or otherwise for any bingo duty which he is, or may become, liable to pay as the Commissioners may from time to time require⁸.

Apart from bingo cards that form part of a machine⁹, a bingo card must be marked with a unique identifying number in a numbered series¹⁰. Bingo cards that can only be used once must be issued in numerical order¹¹. If there is more than one issuing point, the bingo cards issued at each point must be from different series¹². The Commissioners may require bingo cards to be marked with the amount due for entitlement to participate in the game or games of bingo to which they relate¹³.

A bingo-promoter may give the Commissioners written notice that the 12 consecutive periods set out in his notice will be his accounting periods¹⁴. A bingo-promoter must furnish the Commissioners with a bingo return by the fifteenth day following the end of every accounting period¹⁵. A bingo return must be furnished at the address specified on the form, or by such means as the Commissioners may approve¹⁶.

Not later than the fifteenth day following the end of an accounting period, a bingo-promoter must pay to the Commissioners the bingo duty due from him in respect of that accounting period¹⁷.

1 As to the charge to bingo duty see PARA 766. As to the meaning of 'bingo' see PARA 766 note 2.

2 As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

3 See the Betting and Gaming Duties Act 1981 s 20C(1) (added by the Finance Act 2003 s 9), and the Betting and Gaming Duties Act 1981 Sch 3 para 9(1), (2). As to the regulations that have been made see the Bingo Duty Regulations 2003, SI 2003/2503; and the text and notes 6, 9-17.

4 See the Betting and Gaming Duties Act 1981 Sch 3 para 9(1).

5 As to the computation of time generally see **TIME** vol 97 (2010) PARA 329 et seq.

6 Betting and Gaming Duties Act 1981 Sch 3 para 10(1) (amended by the Finance Act 2003 s 9(7)). A 'bingo-promoter' is a person who promotes the playing of bingo chargeable with bingo duty: Betting and Gaming Duties Act 1981 Sch 3 para 8.

Any person who is a bingo-promoter but is not registered as such, and is not a person to whom Sch 3 para 10(1) applies, must within five days of becoming a bingo-promoter (disregarding a Saturday, Sunday or bank holiday) notify the Commissioners of that fact and of the place where the bingo was and (if he intends to continue to promote bingo which will or may be chargeable with duty) is to be played and apply to be registered as a bingo-promoter: Sch 3 para 10(1A) (added by the Finance Act 1982 Sch 6 Pt IV para 5).

The notification and application for registration required by the Betting and Gaming Duties Act 1981 Sch 3 para 10(1) or Sch 3 para 10(1A) must be made on an application form provided by the Commissioners: Bingo Duty Regulations 2003, SI 2003/2503, reg 4(1). The application form must contain such information as the Commissioners think is necessary for the administration of bingo duty and the protection of the revenue from that duty: reg 4(2). The Commissioners may provide different application forms for different purposes; in particular, they may provide application forms that are suitable for electronic transmission: reg 4(3). If there is any change in the information contained in his application form, or subsequently notified to the Commissioners, a registered bingo-promoter must, within seven days of that change, notify the Commissioners in writing: reg 4(4). A registered bingo-promoter who ceases to promote the playing of chargeable bingo must, within seven days of that cessation, notify the Commissioners in writing: reg 4(5). For the purposes of the Bingo Duty Regulations 2003, SI 2003/2503, 'bingo-promoter' means a person who promotes the playing of bingo that is not exempt from bingo duty: reg 2. 'Chargeable bingo' means bingo that is not subject to an exemption specified in the Betting and Gaming Duties Act 1981 Sch 3 Pt I (see PARA 767); and 'registered bingo-promoter' means a person registered as a bingo-promoter under Sch 3 para 10: Bingo Duty Regulations 2003, SI 2003/2503, reg 4(6).

7 Where a person gives notice under the Betting and Gaming Duties Act 1981 Sch 3 para 10(1) or Sch 3 para 10(1A): see the text and notes 5-6.

8 See the Betting and Gaming Duties Act 1981 Sch 3 para 10(2) (amended by the Finance Act 1982 Sch 6 Pt IV para 5). Conditions must not be so imposed if the premises at which the bingo in question is or is to be played are not licensed under a bingo premises licence: see the Betting and Gaming Duties Act 1981 Sch 3 para 10(2) (as so amended; further amended by the Finance Act 2007 Sch 25 Pt 2 paras 3, 12(1), (4)). As to the meaning of 'bingo premises licence' see PARA 460 at head (2); and as to the application of that definition see PARA 766 note 4.

If a registered bingo-promoter fails to give the required security or further security the Commissioners may cancel his registration but without prejudice to his right to apply again to be registered: see the Betting and Gaming Duties Act 1981 Sch 3 para 10(3).

9 Bingo Duty Regulations 2003, SI 2003/2503, reg 6(1). 'Bingo card' means the set of numbers or symbols that a player uses to play bingo: reg 6(6).

10 Bingo Duty Regulations 2003, SI 2003/2503, reg 6(2).

11 Bingo Duty Regulations 2003, SI 2003/2503, reg 6(3).

12 Bingo Duty Regulations 2003, SI 2003/2503, reg 6(4).

13 Bingo Duty Regulations 2003, SI 2003/2503, reg 6(5).

14 See the Bingo Duty Regulations 2003, SI 2003/2503, reg 5.

15 Bingo Duty Regulations 2003, SI 2003/2503, reg 7(1). If the fifteenth day following the end of an accounting period is not a business day, a bingo return must be furnished by the last business day before that day: reg 7(5). A bingo return is a return furnished on a form provided by the Commissioners containing the following information (see reg 7, Schedule):

- 141 (1) the name and address of the bingo-promoter;
- 142 (2) any bingo registration number allocated by the Commissioners to the bingo-promoter;
- 143 (3) the accounting period to which the return relates;
- 144 (4) the day by which the return must be furnished;
- 145 (5) the amount of the bingo-promoter's bingo receipts for the accounting period;

- 146 (6) the amount of the bingo-promoter's expenditure on bingo winnings for the accounting period;
- 147 (7) the amount of any losses the bingo-promoter has carried forward from the last accounting period;
- 148 (8) the aggregate of the amounts referred to in heads (6) and (7) above;
- 149 (9) the amount of the bingo-promoter's bingo promotion profits for the accounting period;
- 150 (10) the amount of bingo duty due from the bingo-promoter for the accounting period;
- 151 (11) the amount of any bingo duty due from the bingo-promoter for earlier accounting periods that has not been included in an earlier return; and
- 152 (12) the net amount of bingo duty due to the Commissioners.

The Commissioners may provide different forms of bingo return for different purposes; in particular, they may provide forms that are suitable for electronic transmission: reg 7(3).

16 Bingo Duty Regulations 2003, SI 2003/2503, reg 7(4).

17 Bingo Duty Regulations 2003, SI 2003/2503, reg 8(1). Payment must be made in such manner as is specified in a notice published by the Commissioners and not withdrawn by a further notice, or in such manner as the Commissioners may approve: reg 8(2). Where the manner of payment involves the collection of the bingo duty due to the Commissioners by means of direct debit, the bingo-promoter must ensure that he has sufficient funds in his account to satisfy the payment: reg 8(3). If the fifteenth day following the end of an accounting period is not a business day, the bingo duty must be paid by the last business day before that day: reg 8(4).

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769. Power to enter premises and obtain information.

An officer of Revenue and Customs¹ may, without paying, enter on any premises where bingo² is played or on which he has reasonable cause to suspect³ that bingo has been or is about to be played, and may inspect the premises and anything whatsoever which he finds there⁴. He may further:

- 2726 (1) require any person concerned with the management of the premises to provide him with information with respect to activities carried on there⁵; and
- 2727 (2) require any person on the premises who appears to him to be, or to have been, playing any game to provide him with information with respect to the game⁶.

An officer who enters any premises in the exercise of these powers is to be permitted to remain there at any time when the premises are being used for gaming or when he has reasonable cause to suspect that they are about to be so used⁷.

¹ ie a person commissioned by the Commissioners for Revenue and Customs: see the Customs and Excise Management Act 1979 s 1(1) (definition applied by the Betting and Gaming Duties Act 1981 s 35(2)). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

² As to the meaning of 'bingo' see PARA 766 note 2.

³ The officer must actually so suspect: see *R v Banks* [1916] 2 KB 621, CCA; *R v Harrison* [1938] 3 All ER 134, CCA.

⁴ Betting and Gaming Duties Act 1981 Sch 3 para 13(1).

⁵ Betting and Gaming Duties Act 1981 Sch 3 para 13(1)(a).

⁶ Betting and Gaming Duties Act 1981 Sch 3 para 13(1)(b). In particular, the officer may require such a person to produce any document or thing in his possession which is or was used in connection with the playing of the game: Sch 3 para 13(1)(b).

⁷ Betting and Gaming Duties Act 1981 Sch 3 para 13(2).

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770. Offences and penalties.

A person who is knowingly concerned in, or in taking steps with a view to¹, the fraudulent evasion, by him or any other person, of bingo duty² is guilty of an offence³. Any person who is knowingly concerned with the promotion of bingo⁴, which is or may be chargeable to bingo duty, where the promoter is not registered by the Commissioners for Revenue and Customs⁵, is also guilty of an offence⁶. If any person contravenes or fails to comply with the statutory provisions regarding the administration of bingo duty⁷ or of regulations, or fails to comply with any requirement made of him by or under any such provision, he is liable to a civil penalty⁸.

1 These words would seem to be of wider meaning than the word 'attempting', so that a preliminary step which would not be an attempt (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 79 et seq) might constitute an offence under this provision.

2 As to the charge to bingo duty see PARA 766.

3 Betting and Gaming Duties Act 1981 Sch 3 para 16(1). A person guilty of such an offence is liable: (1) on summary conviction, to a penalty of the prescribed sum or, if greater, treble the amount of duty sought to be evaded, or to imprisonment for a term not exceeding six months, or to both; or (2) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both: Sch 3 para 16(1)(a), (b) (amended by the Finance Act 1988 s 12(1)(c)). As to the prescribed sum see PARA 246 note 6.

Where any of the offences under the Betting and Gaming Duties Act 1981 Sch 3 para 16 has been committed by a body corporate, every person who was at the date of the commission of the offence a director, general manager, secretary or other similar officer of that body, or was purporting to act in any such capacity, is deemed to be guilty of that offence unless he proves that he did not consent to, or connive at, the commission of the offence and that he exercised all such diligence to prevent it as he ought to have exercised having regard to the nature of his functions in that capacity and in all the circumstances: see s 27.

4 As to the meaning of 'bingo' see PARA 766 note 2.

5 Is registered under the Betting and Gaming Duties Act 1981 Sch 3 para 10: see PARA 768. As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

6 Betting and Gaming Duties Act 1981 Sch 3 para 16(2)(a), (b) (amended by the Finance Act 2003 s 9(9)). A person guilty of such an offence is liable: (1) on summary conviction, to a penalty of the prescribed sum, or to imprisonment for a term not exceeding six months, or to both; or (2) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding two years, or to both: Betting and Gaming Duties Act 1981 Sch 3 para 16(2)(i), (ii). As to offences by bodies corporate see note 3.

7 As to the provisions of the Betting and Gaming Duties Act 1981 Sch 3 paras 8-17: see PARAS 768-769.

8 See the Betting and Gaming Duties Act 1981 Sch 3 para 16(3) (amended by the Finance Act 1994 Sch 4 para 64). The reference in the text to a civil penalty is a reference to a penalty under the Finance Act 1994 s 9 (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1218): see the Betting and Gaming Duties Act 1981 Sch 3 para 16(3) (as so amended).

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(5) AMUSEMENT MACHINE LICENCE DUTY

(i) The Licence and the Charge to Duty

771. Prohibition of unlicensed amusement machines.

Except in specified cases¹ no amusement machine other than an excepted machine² may be provided for play on any premises³ in the United Kingdom⁴ unless there is for the time being in force an amusement machine licence with respect to those premises or a special amusement machine licence with respect to the machine⁵.

A machine is an 'amusement machine' for these purposes if it is a gaming machine⁶ and a prize machine⁷. A machine which has a number of individual playing positions allowing persons to play simultaneously, whether or not participating in the same game, is treated for the statutory purposes⁸ as that number of separate machines⁹.

¹ le except in the cases specified in the Betting and Gaming Duties Act 1981 Sch 4 Pt I (paras 1-4): see PARA 772.

² The following are excepted machines: (1) machines that are not gaming machines; (2) a gaming machine in respect of which (a) the cost of a single game does not exceed 30p; (b) the maximum value of the prize for winning a single game does not exceed £8; and (c) the maximum cash component of the prize for winning a single game does not exceed £5; (3) a gaming machine in respect of which (a) the cost of a single game does not exceed 10p; and (b) the maximum value of the prize for winning a single game does not exceed £5; and (4) two-penny machines: Betting and Gaming Duties Act 1981 s 21(5) (added by the Finance Act 2006 s 12(1)). 'Two-penny machine' means an amusement machine in relation to which the cost for each time a game is played on it either does not exceed 2p, or, where the machine provides differing numbers of games in different circumstances, cannot exceed 2p: Betting and Gaming Duties Act 1981 s 26(2) (definition substituted by the Finance Act 2003 s 10(3); amended by the Finance Act 2006 ss 12(6)(b), 178, Sch 26 Pt 1(2)).

Any reference in the Betting and Gaming Duties Act 1981 Pt II (ss 17-26N) to an amount in sterling, in the context of the cost of playing a game, or the amount of the prize for a game, includes a reference to the equivalent amount in another currency: s 26N(1) (s 26N added by the Finance Act 2003 s 11(2); renumbered by the Finance Act 2007 Sch 1 Pt 1 para 1). The equivalent amount in another currency, in relation to any day, is to be determined by reference to the London closing exchange rate for the previous day: Betting and Gaming Duties Act 1981 s 26N(2) (as so added and amended).

References in the Betting and Gaming Duties Act 1981 21-26, Sch 4 (see the text and notes 3-9; and PARA 772 et seq) to a game, in relation to any machine, include references to a game in the nature of a quiz or puzzle and to a game which is played solely by way of a pastime or against the machine, as well as one played wholly or partly against one or more contemporaneous or previous players: s 26(2A) (added by the Finance Act 1995 Sch 3 para 8(3)).

³ 'Premises' includes any place whatsoever and any means of transport: Betting and Gaming Duties Act 1981 s 26(2). A machine is provided for play on any premises if it is made available on those premises in such a way that persons resorting to them can play it, and (subject to regulations relating to spare and broken down machines: see PARA 772), where one or more machines is or are so made available, any other gaming machine anywhere on the premises is treated as provided for play on those premises notwithstanding that it is not so made available or is not in a state in which it can be played: Betting and Gaming Duties Act 1981 s 26(3) (amended by the Finance Act 1987 s 5; the Finance Act 1995 Sch 3 para 8).

A person 'resorts to' premises from the moment of entry and for the whole period of the time while he remains on the premises: *R v Customs and Excise Comrs, ex p Ferrymatics Ltd* (1995) Times, 23 February.

4 For these purposes, 'United Kingdom' includes the territorial waters of the United Kingdom: Betting and Gaming Duties Act 1981 s 26(2) (definition substituted by the Finance Act 1985 s 8, Sch 5 para 6). As to the meaning of 'United Kingdom' generally see **PARA 16** note 8; and as to the territorial sea of the United Kingdom see **WATER AND WATERWAYS** vol 100 (2009) **PARA 31**.

5 See the Betting and Gaming Duties Act 1981 s 21(1), (2) (s 21 substituted by the Finance Act 1984 Sch 3 para 2; the Betting and Gaming Duties Act 1981 s 21(1) amended by the Finance Act 1985 Sch 5 Pt I; the Finance Act 1993 s 16(2), (9); the Finance Act 1994 Sch 3 para 3(2), (11); the Finance Act 1995 Sch 3 para 2(1); the Finance Act 1996 s 12(1); the Betting and Gaming Duties Act 1981 s 21(2) substituted by the Finance Act 1994 Sch 3 para 3(2), (11); amended by the Finance Act 1995 Sch 3 para 2(1); the Finance Act 1996 s 12(2)). As to penalties see **PARA 782**.

6 For these purposes, 'gaming machine' means a machine that is a gaming machine for the purposes of the Value Added Tax Act 1994 s 23 (see **PARA 744**): Betting and Gaming Duties Act 1981 s 25(1A) (added by the Finance Act 1995 Sch 3 para 6(1); substituted by the Finance Act 2006 s 11(1)).

7 Betting and Gaming Duties Act 1981 s 25(1) (substituted by the Finance Act 2006 s 11(1)). For these purposes, a machine is a prize machine unless it is constructed or adapted so that a person playing it once and successfully either receives nothing or receives only (1) an opportunity, afforded by the automatic action of the machine, to play again (once or more often) without paying; or (2) a prize, determined by the automatic action of the machine and consisting in either (a) money of an amount not exceeding the sum payable to play the machine once; or (b) a token which is, or two or more tokens which in the aggregate are, exchangeable for money of an amount not exceeding that sum: Betting and Gaming Duties Act 1981 s 25(1C) (added by the Finance Act 1995 Sch 3 para 6(1); amended by the Finance Act 2006 s 11(2)).

8 Ie for the purposes of the Betting and Gaming Duties Act 1981 ss 21-24: see the text and notes 1-7; and **PARAS 773-774, 782**.

9 Betting and Gaming Duties Act 1981 s 25(4) (substituted by the Finance Act 2006 s 12(4)).

UPDATE

771 Prohibition of unlicensed amusement machines

NOTE 2--In head (3)(b) for '£5' read '£15'; and new head (3)(c) the maximum cash component of the prize for winning a single game does not exceed £8: Betting and Gaming Duties Act 1981 s 21(5) (amended by Finance Act 2009 s 22).

Also exempt is a gaming machine in respect of which the cost of a single game does not exceed £1, the maximum value of the prize for winning a single game does not exceed £50, and any prize that can be won is neither money nor something that can be exchanged for or used in place of money or that can be exchanged for something other than money: Betting and Gaming Duties Act 1981 s 21(5).

To the extent that a prize consists of anything other than money, its value for the purposes of ss 21-23 is (1) in the case of a voucher or token that may be exchanged for, or used in place of, an amount of money, that amount; (2) in the case of a voucher or token that does not fall within head (1) above and that may be exchanged for something other than money, the cost that the person providing the machine would incur in obtaining that thing from a person who is not a connected person; and (3) in any other case, the cost that the person providing the machine would incur in obtaining the prize from a person who is not a connected person: Betting and Gaming Duties Act 1981 s 21(6) (added by Finance Act 2009 s 22(6)). The Income and Corporation Taxes Act 1988 s 839 (connected persons) (see **INCOME TAXATION** vol 23(2) (Reissue) **PARA 1258**) applies for the purposes of the Betting and Gaming Duties Act 1981 s 21(6): Finance Act 2009 s 22(7).

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772. Exemptions.

An amusement machine licence¹ is not required in order to authorise the provision of an amusement machine² at certain events and entertainments³ where the whole proceeds of the entertainment (including the proceeds from the machine) after deduction of expenses⁴ will be devoted to purposes other than private gain⁵, and where the opportunity to win prizes by playing the machine, or that machine and any other amusement machines provided, does not constitute the only, or only substantial, inducement for persons to attend⁶.

An amusement machine licence is not required to authorise a relevant machine⁷ on any premises if a seasonal licence⁸ has previously been granted for that year authorising the provision of any number of relevant machines and that licence has not been surrendered⁹. Where a seasonal licence is granted for any year authorising the provision of any number of relevant machines on any premises, and the licence is not surrendered, it is treated as authorising the provision of that number of relevant machines on the premises during the period in that year beginning with 1 October and ending with the Sunday before the first Monday in November¹⁰.

Provision is also made for spare or broken down machines to be kept without a licence¹¹.

1 As to the requirement for an amusement machine licence see PARA 101.

2 As to the meaning of 'amusement machine' see PARA 101.

3 I.e. a bazaar, sale of work, fête, dinner, dance, sporting or athletic event, or other entertainment of a similar character, whether limited to one day or extending over two or more days: see the Betting and Gaming Duties Act 1981 Sch 4 para 1(1).

4 This includes any expenses incurred in connection with the provision of amusement machines and of prizes for successful players: see the Betting and Gaming Duties Act 1981 Sch 4 para 1(2)(a) (Sch 1 para 1(1), (2) amended by the Finance Act 1995 Sch 3 para 11(1), (2)).

5 In construing the Betting and Gaming Duties Act 1981 Sch 4 para 1(2)(a), proceeds of an entertainment promoted on behalf of a society falling within this provision which are applied for any purpose calculated to benefit the society as a whole are not to be held to be applied for purposes of private gain by reason only that their application for that purpose results in benefit to any person as an individual; and a society falls within this provision if it is established and conducted either (1) wholly for purposes other than purposes of any commercial undertaking; or (2) wholly or mainly for the purpose of participation in or support of athletic sports or athletic games: Sch 4 para 1(3), (4) (substituted by the Finance Act 1983 s 5(2)). 'Society' includes any club, institution, organisation or association of persons, by whatever name called, and any separate branch or section of such a club, institution, organisation or association: Betting and Gaming Duties Act 1981 Sch 4 para 1(4) (as so substituted).

6 Betting and Gaming Duties Act 1981 Sch 4 para 1(1), (2) (as amended: see note 4).

7 An amusement machine is a relevant machine for these purposes unless it is a gaming machine which is not a small-prize machine: Betting and Gaming Duties Act 1981 Sch 4 para 4(7A) (Sch 4 para 4 substituted by the Finance Act 1994 Sch 3 para 4; and the Betting and Gaming Duties Act 1981 Sch 4 para 4(7A) added by the Finance Act 1995 Sch 3 para 11). As to the meaning of 'gaming machine' see PARA 771 note 6. An amusement machine is a small-prize machine if it is a prize machine and the value or aggregate value of the benefits in money or money's worth, which any player who is successful in a single game played by means of the machine may receive, cannot exceed £8: Betting and Gaming Duties Act 1981 s 22(2)(a) (substituted by the Finance Act 1985 Sch 5 Pt I; amended by the Finance Act 1995 Sch 3 para 3(1); the Finance Act 2000 Sch 2 paras 1, 3(a)). The Commissioners for Revenue and Customs may by order substitute for a sum for the time being mentioned

in the Betting and Gaming Duties Act 1981 s 22(2) such higher sum as may be specified in the order, with effect from a date so specified: s 22(3) (substituted by the Finance Act 1985 Sch 5 Pt I; amended by the Finance Act 2000 Sch 2 paras 1, 3(2)). At the date at which this volume states the law, no such order was in force with regard to the Betting and Gaming Duties Act 1981 s 22(2)(a). As to the meaning of 'prize machine' see PARA 771 note 6; and as to the meaning of references to a game see PARA 771 note 2.

8 A 'seasonal licence' is, in relation to any year, an amusement machine licence expressed to authorise only the provision of relevant machines on the premises for the period of six months beginning with 1 April in that year: Betting and Gaming Duties Act 1981 Sch 4 para 4(3) (as substituted (see note 7); Sch 4 para 4(3), (4) amended by the Finance Act 1995 Sch 3 para 11).

A licence is not a seasonal licence in respect of any premises in relation to any year if any amusement machine licence has been granted in respect of those premises for any part of the preceding winter period: Betting and Gaming Duties Act 1981 Sch 4 para 4(4) (as so substituted and amended). 'Winter period' means the period beginning with the first Monday in November and ending with the last day of February: Sch 4 para 4(8) (as so substituted; amended by the Finance Act 2000 Sch 2 para 8).

9 Betting and Gaming Duties Act 1981 Sch 4 para 4(1) (as substituted (see note 7); amended by the Finance Act 1995 Sch 3 para 11). As to surrender of the licence see PARA 779.

10 Betting and Gaming Duties Act 1981 Sch 4 para 4(2) (as substituted (see note 7); amended by the Finance Act 1995 Sch 3 para 11; the Finance Act 2000 Sch 2 para 8).

An additional amount of duty is payable where a seasonal licence is granted in respect of any premises and another amusement machine licence is granted in respect of those premises for any period which includes the whole or any part of the following winter period: see the Betting and Gaming Duties Act 1981 Sch 4 para 4(5)-(7) (as substituted (see note 7); amended by the Finance Act 1995 Sch 3 para 11). Those provisions have effect where an amusement machine is provided on any premises at any time in a winter period, and the provision of that machine on those premises at that time is authorised by a special amusement machine licence (see PARA 771) as if an amusement machine licence had been granted in respect of those premises for that winter period: Betting and Gaming Duties Act 1981 Sch 4 para 4(7AA) (added by the Finance Act 1996 s 12(5)).

11 The Commissioners for Revenue and Customs may by regulations make provision for the purpose of enabling spare amusement machines to be kept on premises for use in the case of the breakdown of other amusement machines on those premises; and such regulations may provide that, in such circumstances and subject to such conditions as may be specified in the regulations, an amusement machine on any premises which is not made available as mentioned in the Betting and Gaming Duties Act 1981 s 26(3) (see PARA 771 note 3) or is not in a state in which it can be played, is not to be treated by virtue of s 26(3) as provided for play on those premises: s 26(3A) (added by the Finance Act 1987 s 5(2), (3); amended by the Finance Act 1995 Sch 3 para 8(1)). As to the meaning of 'premises' see PARA 771 note 3.

A spare or broken down amusement machine is not to be treated by virtue of the Betting and Gaming Duties Act 1981 s 26(3) as provided for play on any premises where (1) the machine is of the same type for duty purposes as another machine licensed on the premises; and (2) there is a licence in force in respect of at least two other machines; and (3) either (a) the machine is kept in a place to which persons resorting to those premises have no access; or (b) the machine is installed so that it cannot be played at the same time as those licensed on the premises; but subject to the Amusement Machine Licence Duty Regulations 1995, SI 1995/2631, reg 4(1A), this does not apply to more than one machine at any premises other than an arcade: reg 4(1) (amended by SI 1997/859). 'Arcade' means premises used wholly or mainly for the playing of games by means of machines: Amusement Machine Licence Duty Regulations 1995, SI 1995/2631, reg 4(3). Where, however, the number of machines licensed on the premises exceeds three, reg 4(1) applies as if for the words 'one machine' there were substituted 'two machines'; but this does not apply unless for each machine that is spare or broken down there is licensed on the premises another machine of the same type for duty purposes: reg 4(1A) (added by SI 1997/859).

UPDATE

772 Exemptions

NOTE 7--For '£8' read '£10': Betting and Gaming Duties Act 1981 s 22(2) (amended by Finance Act 2009 s 22(7)).

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773. Rates of duty to be charged on amusement machine licences.

A duty of excise is charged on amusement machine licences¹ and the duty on a licence is determined in accordance with the following provisions². The amount of duty payable on an amusement machine licence is the appropriate amount for the machine which the licence authorises, or, if it authorises two or more machines, the aggregate of the appropriate amounts for each of those machines³.

The appropriate amount of duty is determined by reference to the period for which the licence is granted and the category of the machine⁴. Those categories range from Category A⁵, the highest category, to Category C⁶, the lowest⁷, and thus differ from the categories of gaming machine for the purposes of the Gambling Act 2005 in that there is no Category D⁸. Category B, however, comprises Category B1⁹, Category B2¹⁰, Category B3¹¹ and Category B4¹² and the monetary limits for these categories correspond to the limits for the same categories of gaming machine as in the Gambling Act 2005¹³; but unlike the 2005 Act, there is no Category B3A¹⁴. Where a machine offers more than one class of game, it falls within a category for these purposes only if it satisfies the requirements of that category in respect of each class¹⁵.

1 As to the meaning of 'amusement machine', and the requirement for a licence, see PARA 771.

2 Betting and Gaming Duties Act 1981 s 22(1) (amended by the Finance Act 1993 s 16; the Finance Act 1995 Sch 3 paras 1, 3).

3 Betting and Gaming Duties Act 1981 s 23(1) (substituted by the Finance Act 1994 Sch 3 para 1(4), (9); amended by the Finance Act 1995 Sch 3 paras 1, 4).

4 See the Betting and Gaming Duties Act 1981 s 23(2), Table (s 23(2)-(6) substituted by the Finance Act 2006 s 12(3); the Betting and Gaming Duties Act 1981 s 23(2), Table amended by the Finance Act 2008 s 23).

5 For these purposes, a 'Category A' machine is a gaming machine which is not within another category: Betting and Gaming Duties Act 1981 s 23(3) (as substituted: see note 4). Compare PARA 549 ('Category A' for the purposes of the Gambling Act 2005). As to the meaning of 'gaming machine' see PARA 771 note 6.

6 For these purposes, a 'Category C' machine is: (1) a gaming machine in respect of which the cost of a single game does not exceed 5p; and (2) a gaming machine in respect of which (a) the cost of a single game does not exceed 50p; and (b) the maximum value of the prize for winning a single game does not exceed £35: Betting and Gaming Duties Act 1981 s 23(3) (as substituted (see note 4); amended by the Finance Act 2007 s 9(1), (2)). Compare PARA 551 ('Category C' for the purposes of the Gambling Act 2005). As to the meaning of references to a game see PARA 771 note 2. Where a prize is anything other than money its value for the purposes of the Betting and Gaming Duties Act 1981 s 23(3) is: (i) in the case of a voucher or token that may be exchanged for, or used in place of, an amount of money, that amount; (ii) in the case of a voucher or token that does not fall within head (i) above and that may be exchanged for something other than money, the cost that the person providing the machine would incur in obtaining that thing from a person not connected with him (within the meaning of the Income and Corporation Taxes Act 1988 s 839: see **INCOME TAXATION** vol 23(2) (Reissue) PARA 1258); and (iii) in any other case, the cost that the person providing the machine would incur in obtaining the prize from a person not connected with him (within that meaning): Betting and Gaming Duties Act 1981 s 23(5) (as substituted: see note 4).

The Commissioners for Revenue and Customs may by order substitute for a sum for the time being specified in s 23(3) such higher sum as they consider appropriate: s 23(7) (added by the Finance Act 2007 s 9(1), (3)). At the date at which this volume states the law, no such order had been made. As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

As to amounts in currencies other than sterling see the Betting and Gaming Duties Act 1981 s 26N(1), (2); and PARA 771 note 2. For the purposes of determining what duty is payable on an amusement machine licence in a

case where s 26N applies, the equivalent in another currency of an amount in sterling is to be taken to be its equivalent on the day on which the application for the licence is received by the Commissioners, or the due date in the case of a default licence: s 26N(3) (s 26N added by the Finance Act 2003 s 11(2); renumbered by the Finance Act 2007 Sch 1 Pt 1 para 1). For these purposes, 'default licence' means a licence granted under Sch 4A para 3(1) (see PARA 780) and 'due date' has the meaning given by Sch 4A para 2(4) (see PARA 780): s 26N(4) (as so added and amended).

7 See the Betting and Gaming Duties Act 1981 s 23(6) (as substituted: see note 4).

8 As to categories of gaming machine for the purposes of the Gambling Act 2005 see generally PARA 548; and as to Categories A to D for the purposes of that Act see PARAS 549-552.

9 For these purposes, a 'Category B1' machine is a gaming machine which is not within a lower category and in respect of which (1) the cost of a single game does not exceed £2; and (2) the maximum value of the prize for winning a single game does not exceed £4,000: Betting and Gaming Duties Act 1981 s 23(3) (as substituted: see note 4). See also note 6. Compare PARA 550 ('Category B1' for the purposes of the Gambling Act 2005).

10 For these purposes, a 'Category B2' machine is a gaming machine which is not within a lower category and in respect of which (1) the cost of a single game does not exceed £100; and (2) the maximum value of the prize for winning a single game does not exceed £500: Betting and Gaming Duties Act 1981 s 23(3) (as substituted: see note 4). See also note 6. Compare PARA 550 ('Category B2' for the purposes of the Gambling Act 2005).

11 For these purposes, a 'Category B3' machine is a gaming machine which is not within a lower category and in respect of which (1) the cost of a single game does not exceed £1; and (2) the maximum value of the prize for winning a single game does not exceed £500: Betting and Gaming Duties Act 1981 s 23(3) (as substituted: see note 4). See also note 6. Compare PARA 550 ('Category B3' for the purposes of the Gambling Act 2005).

12 For these purposes, a 'Category B4' machine is a gaming machine which is not within a lower category and in respect of which (1) the cost of a single game does not exceed £1; and (2) the maximum value of the prize for winning a single game does not exceed £250: Betting and Gaming Duties Act 1981 s 23(3) (as substituted: see note 4). See also note 6. Compare PARA 550 ('Category B4' for the purposes of the Gambling Act 2005).

13 See notes 9-12.

14 As to Category B3A gaming machines for the purposes of the Gambling Act 2005 see PARA 550.

15 Betting and Gaming Duties Act 1981 s 23(4) (as substituted: see note 4).

UPDATE

773 Rates of duty to be charged on amusement machine licences

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

NOTE 4--Betting and Gaming Duties Act 1981 s 23(2), Table substituted: Finance Act 2009 s 21.

NOTE 6--In head (2)(a) for '50p' read '£1', and in head (2)(b) for '£35' read '£70': Betting and Gaming Duties Act 1981 s 23(3) (amended by Finance Act 2009 s 22(9)). Betting and Gaming Duties Act 1981 s 23(5) repealed: Finance Act 2009 s 22(10).

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774. Limitation on the number of licences and machines.

Amusement machines¹ chargeable at a particular rate must not be provided on any premises² in excess of the number authorised by the licence or licences authorising the provision of amusement machines chargeable at that rate³. Where a licence authorising amusement machines chargeable at one rate only is in force in respect of any premises, machines chargeable at any other rate must not be provided for play⁴ on those premises unless another licence authorising the provision of amusement machines chargeable at that other rate is also in force in respect of the premises or the machines⁵.

1 As to the meaning of 'amusement machine' see PARA 771.

2 As to the meaning of 'premises' see PARA 771 note 3.

3 Betting and Gaming Duties Act 1981 s 24(3) (s 24(3), (4) amended by the Finance Act 1994 Sch 3 para 1; the Finance Act 1995 Sch 3 para 5). As to the requirement for a licence see PARA 771.

4 As to when a machine is provided for play see PARA 771 note 3.

5 Betting and Gaming Duties Act 1981 s 24(4) (as amended (see note 3); further amended by the Finance Act 1996 s 12(4)).

UPDATE

774 Limitation on the number of licences and machines

TEXT AND NOTES--Amusement machine licences need only be combined in a single document if (1) their expiry dates are the same; (2) their holder is the same; (3) the premises with respect to which each of them is in force is the same; (4) each of them authorises the provision of only one amusement machine for play on those premises, but is not a special amusement machine licence (see PARA 775); (5) none of them is a seasonal licence (see PARA 772 NOTE 8); (6) at least one of them was granted for 12 months; and (7) at least one of them was first granted on 1 November 2008 or later: Amusement Machine Licence Duty Regulations 1995, SI 1995/2631, reg 5 (added by SI 2008/2693).

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(ii) Administration of Licences

775. Application for, grant and duration of licence.

The duty on amusement machine licences¹ is under the care and management of the Commissioners for Revenue and Customs, who may make regulations providing for the administration or enforcement of the duty, or for the protection of the revenue in respect of it². An application for an amusement machine licence must be made to the Commissioners in such form and manner as they may require³.

An amusement machine licence may be granted for a period of a month, or of any number of months not exceeding 12, beginning on any day of any month⁴. A special amusement machine licence⁵ must be granted only:

- 2728 (1) for a small-prize machine⁶;
- 2729 (2) if conditions prescribed by the Commissioners by regulations are satisfied in relation to the application for the licence, the applicant and the machine⁷; and
- 2730 (3) for a period of 12 months⁸.

The period for which an amusement machine licence is granted begins with the day on which the application is received by the Commissioners or, if a later day is specified for that purpose in the application, with that day, and the licence expires at the end of that period⁹.

1 As to the meaning of 'amusement machine', and as to the requirement for a licence, see PARA 771.

2 Betting and Gaming Duties Act 1981 Sch 4 para 5(1) (amended by the Finance Act 1995 Sch 4 para 11). The current regulations are the Amusement Machine Licence Duty Regulations 1995, SI 1995/2631: see PARAS 772, 778. As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq. The Commissioners are also empowered to make arrangements for payment of the tax by instalments: see PARA 776. Regulations may also provide for the Betting and Gaming Duties Act 1981 Sch 4 to have effect in relation to special amusement machine licences (see note 5) with such exceptions, adaptations and modifications as may be prescribed: Sch 4 para 5(2) (Sch 4 para 5(2), (3) added by the Finance Act 1996 s 12(6)). Without prejudice to the generality of the Betting and Gaming Duties Act 1981 Sch 4 para 5(1), (2), regulations may include provision requiring (1) a special amusement machine licence to be displayed on such premises and in such manner; and (2) the machine to which such a licence relates to bear such labels and marks, as may be determined by directions given, in accordance with the regulations, by the Commissioners: Sch 4 para 5(3) (as so added). See the Amusement Machine Licence Duty (Special Licences) Regulations 1996, SI 1996/1423, which were made partly in the exercise of those powers; note 7; and PARAS 777-779.

3 Betting and Gaming Duties Act 1981 Sch 4 para 6 (Sch 4 paras 6, 7 substituted by the Finance Act 1994 Sch 3 para 1; amended by the Finance Act 1995 Sch 4 para 11).

4 Betting and Gaming Duties Act 1981 s 21(3) (substituted by the Finance Act 1994 Sch 3 paras 1(1), (2), (9), 4(3), 5(5); amended by the Finance Act 1995 Sch 3 para 2(1)).

5 I.e. a licence with respect to a machine, rather than premises: see PARA 771.

6 Betting and Gaming Duties Act 1981 s 21(4)(a) (s 21(4) substituted by the Finance Act 2006 s 12(1)). As to the meaning of 'small-prize machine' see PARA 772 note 7.

7 Betting and Gaming Duties Act 1981 s 21(4)(b) (as substituted: see note 6). No person must apply for a special licence unless he is a qualified applicant: Amusement Machine Licence Duty (Special Licences)

Regulations 1996, SI 1996/1423, reg 3(1). A person is a qualified applicant if (1) he is applying for at least ten special licences that will all take effect on the same day; or (2) he is the holder of one or more special licences and will be the holder of at least ten special licences that will all be in force on the day when any special licence he is applying for takes effect: reg 3(2).

8 Betting and Gaming Duties Act 1981 s 21(4)(c) (as substituted: see note 6).

9 Betting and Gaming Duties Act 1981 Sch 4 para 7 (as substituted and amended: see note 3).

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776. Arrangements for payment of duty by instalments.

The Commissioners for Revenue and Customs may make and publish arrangements setting out the circumstances in which, and the conditions subject to which, a person to whom an amusement machine licence¹ is granted for a period of 12 months may, at his request and if the Commissioners think fit, be permitted to pay the duty² on that licence by regular instalments during the period of the licence, instead of at the time when it is granted³. Such arrangements must provide for the amount of each instalment to be such that the aggregate amount of all the instalments to be paid in respect of any licence is an amount equal to 105 per cent of what would otherwise have been the duty on that licence⁴.

If a person who has been permitted, in accordance with such arrangements, to pay the duty on any amusement machine licence by instalments fails to pay any instalment at the time when it becomes due in accordance with the arrangements and does not make good that failure within seven days of being required to do so by notice given by the Commissioners, then:

- 2731 (1) the licence is to be treated as having ceased to be in force as from the time when the instalment became due;
- 2732 (2) the person to whom the licence was granted becomes liable to any unpaid duty to which he would have been liable⁵ if he had surrendered the licence at that time; and
- 2733 (3) any amusement machines found on the premises to which the licence related are liable to forfeiture⁶.

1 As to the meaning of 'amusement machine', and as to the requirement for a licence, see PARA 771.

2 As to the charge to duty see PARA 773.

3 Betting and Gaming Duties Act 1981 Sch 4 para 7A(1) (Sch 4 para 7A added by the Finance Act 1995 Sch 3 para 11(5)). The Finance Act 1994 ss 14-16 (review and appeals: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 1240 et seq, 1258 et seq) have effect in relation to any decision of the Commissioners refusing an application for permission to pay duty by instalments in accordance with arrangements under the Betting and Gaming Duties Act 1981 Sch 4 para 7A as if that decision were a decision of a description specified in the Finance Act 1994 Sch 5 (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1242 et seq): Betting and Gaming Duties Act 1981 Sch 4 para 7A(5) (as so added). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

4 Betting and Gaming Duties Act 1981 Sch 4 para 7A(2) (as added: see note 3).

5 Ie under the Betting and Gaming Duties Act 1981 Sch 4 para 11(1C): see PARA 779.

6 Betting and Gaming Duties Act 1981 Sch 4 para 7A(3), (4) (as added: see note 3).

UPDATE

776 Arrangements for payment of duty by instalments

NOTE 3--The reference is now to the Finance Act 1994 ss 13A, 14-16: Betting and Gaming Duties Act 1981 Sch 4 para 7A(5) (amended by SI 2009/56).

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777. Transfer of licence.

An amusement machine licence¹, other than a special amusement machine licence², may be transferred without payment to a successor in title to the interest in the premises³ of the person to whom the licence was granted, on application to the proper officer of Revenue and Customs⁴, who must without any additional payment make the transfer in such manner as the Commissioners for Revenue and Customs may direct⁵.

Where a licence holder⁶ dies, the proper officer may transfer the licence, in such manner as the Commissioners may direct and without additional payment, to some other person for the remainder of the period for which the licence was granted⁷.

1 As to the meaning of 'amusement machine', and as to the requirement for a licence, see PARA 771.

2 See the Amusement Machine Licence Duty (Special Licences) Regulations 1996, SI 1996/1423, reg 5(2), disapplying the Betting and Gaming Duties Act 1981 Sch 4 para 8(1). As to the meaning of 'special amusement machine licence' see PARA 771.

3 As to the meaning of 'premises' see PARA 771 note 3.

4 As to the meaning of 'officer' see PARA 746 note 5. As to the proper officer of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 904.

5 Betting and Gaming Duties Act 1981 Sch 4 para 8(1) (amended by the Finance Act 1994 Sch 3 para 3; the Finance Act 1995 Sch 3 para 11). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

6 I.e. the holder of either an amusement machine licence or a special amusement machine licence.

7 Betting and Gaming Duties Act 1981 Sch 4 para 8(2) (amended by the Finance Act 1984 Sch 3 para 7; the Finance Act 1995 Sch 3 para 11).

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778. Display of licence.

The holder of an amusement machine licence¹ in respect of any premises² must secure that it is displayed on the premises at such times and in such manner as may be prescribed by regulations and must produce it for inspection on demand by an officer of Revenue and Customs³. He must display it at all times in a prominent position in the premises to which it relates⁴.

The Commissioners for Revenue and Customs may by a notice they publish that has not been withdrawn by a further notice direct the holder of a special amusement machine licence to display it in such manner and on such premises as the Commissioners see fit and to mark any machine to which it relates with such labels and marks as the Commissioners may require⁵.

1 As to the meaning of 'amusement machine', and the requirement for a licence, see PARA 771.

2 As to the meaning of 'premises' see PARA 771 note 3.

3 Betting and Gaming Duties Act 1981 Sch 4 para 12 (amended by the Finance Act 1994 Sch 3 para 3; the Finance Act 1995 Sch 3 para 11). As to the meaning of 'officer' see PARA 746 note 5. The Betting and Gaming Duties Act 1981 Sch 4 para 12 does not apply to a special amusement machine licence (ie a licence in respect of a machine: see PARA 771): see the Amusement Machine Licence Duty (Special Licences) Regulations 1996, SI 1996/1423, reg 5(2).

4 Amusement Machine Licence Duty Regulations 1995, SI 1995/2631, reg 3.

5 Amusement Machine Licence Duty (Special Licences) Regulations 1996, SI 1996/1423, reg 4. As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

UPDATE

778 Display of licence

TEXT AND NOTE 4--This requirement does not apply when the licence is with the Commissioners or in transit to or from them: SI 1995/2631 reg 3 (amended by SI 2008/2693).

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779. Surrender of licence.

The holder of an amusement machine licence¹ may surrender it to the proper officer of Revenue and Customs² at any time³. Where he does so he is entitled to a repayment of duty of the difference between the amount actually paid on the licence, and the amount (if less) that would have been paid if the period for which the licence was granted had been reduced by the number of complete months in that period which have not expired⁴. This applies to the surrender of a special amusement machine licence⁵ only where its holder will, having regard to any other special amusement machine licences surrendered at the same time, hold at least ten, or cease to hold any, such licences⁶.

Where duty is being paid by instalments and the amount of duty actually paid on a licence that is surrendered is less than the amount which would have been paid thereon if the period for which it was granted had been reduced by the number of complete months in that period which have not expired when the licence is surrendered, the difference between those amounts is treated as unpaid duty⁷.

The provision for surrender⁸ does not apply if any person has been convicted of an offence⁹ involving contravention of the restrictions on provision of gaming machines or the requirements that such machines be licensed where such contravention occurred between the grant of the licence and the date of surrender¹⁰.

1 As to the meaning of 'amusement machine', and as to the requirement for a licence, see PARA 771.

2 As to the meaning of 'officer' see PARA 746 note 5. As to the proper officer of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 904.

3 Betting and Gaming Duties Act 1981 Sch 4 para 11(1) (substituted by the Finance Act 1994 Sch 3 para 5; amended by the Finance Act 1995 Sch 3 para 11).

4 Betting and Gaming Duties Act 1981 Sch 4 para 11(1A), (1B) (added by the Finance Act 1994 Sch 3 para 5). For these purposes, a seasonal licence is treated as granted for the period of eight months beginning with 1 March: Betting and Gaming Duties Act 1981 Sch 4 para 11(1B) (as so added). As to amounts of duty generally see PARA 773; and as to the meaning of 'seasonal licence' see PARA 772 note 8.

5 As to the meaning of 'special amusement machine licence' see PARA 771.

6 Amusement Machine Licence Duty (Special Licences) Regulations 1996, SI 1996/1423, reg 5(3).

7 Betting and Gaming Duties Act 1981 Sch 4 para 11(1C) (added by the Finance Act 1995 Sch 3 para 11). As to payment by instalments see PARA 776.

8 I.e. the Betting and Gaming Duties Act 1981 Sch 4 para 11(1): see the text and notes 1-3.

9 I.e. an offence under the Betting and Gaming Duties Act 1981 s 24 in respect of a contravention of s 21(1) (see PARA 771) or s 24 (see PARA 774): see PARA 782.

10 Betting and Gaming Duties Act 1981 Sch 4 para 11(3) (amended by the Finance Act 1984 s 7, Sch 3 para 7(8)). Where proceedings for such an offence are pending, the right to repayment does not arise until the termination of those proceedings, nor unless every person charged with such an offence in those proceedings has been acquitted: Sch 4 para 11(3) (as so amended).

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(iii) Enforcement and Penalties

780. Revenue and Customs enforcement powers and default licences.

Where it appears to the Commissioners for Revenue and Customs that an amusement machine¹ is or was provided for play on premises² in contravention of specified provisions³, they may give a notice (a 'default notice') stating that one or more amusement machines appear to have been provided for play on specified premises (the 'relevant premises') during a specified period (the 'alleged default period'), the first day of which falls not more than three years before the date of the notice, and the last day of which falls on or before that date⁴. The notice must request the production to the Commissioners of every relevant amusement machine licence⁵. A single default notice may relate to different alleged default periods or different relevant premises⁶. A default notice is deemed to have been given if it is left at, or posted to, the relevant premises, or if it is given to, or posted to or left at the proper address⁷ of, one or more specified persons⁸.

In any case where:

- 2734 (1) the Commissioners give a default notice;
- 2735 (2) the due date specified in the notice passes; and
- 2736 (3) it appears to them that at some time during the alleged default period so specified one or more amusement machines was or were provided for play on the relevant premises so specified without an amusement machine licence being in force in relation to the machines,

the Commissioners may grant one or more licences ('default licences') in relation to each of the machines⁹. Where a default licence is granted, the Commissioners may assess to the best of their judgment the amount which would have been payable as amusement machine licence duty if that licence had been an amusement machine licence¹⁰. In making the assessment, they must use the rates of duty which apply in relation to amusement machine licences granted in consequence of applications received by them on the due date¹¹. If the period of the default licence is 12 months or less, the assessment must be made as if an amusement machine licence had been granted in relation to the unlicensed machine for that period¹². If the period of the default licence is longer than 12 months, the assessment must be made as if:

- 2737 (a) a separate amusement machine licence had been granted in relation to the unlicensed machine for each complete period of 12 months falling wholly within the period of the default licence; and
- 2738 (b) a further amusement machine licence had been granted in relation to the machine for any remaining part of the period of the licence¹³.

Where an amount has been so assessed and notified to a responsible person or his representative, that amount is deemed to be an amount of duty¹⁴ due from the responsible person, and may be recovered accordingly unless, or except to the extent that, the assessment is subsequently withdrawn or reduced¹⁵. The responsible persons to whom an assessment may be notified are any one or more of the persons who are or appear to be, or at any time during

the period to which the assessment relates were or appear to have been, responsible persons in relation to the unlicensed machine or the relevant premises¹⁶. An assessment is deemed to have been notified to a person if it is given to him or left at or posted to his proper address (but is not deemed to have so notified unless and until the default licence in relation to which it has been made, or a copy of that licence, has been given to the person or left at or posted to his proper address)¹⁷.

1 As to the meaning of 'amusement machine' see PARA 771.

2 As to when a machine is provided for play at premises see PARA 771 note 3.

3 le the Betting and Gaming Duties Act 1981 s 21(1) (see PARA 771) or s 24(3) or s 24(4) (see PARA 774).

4 Betting and Gaming Duties Act 1981 Sch 4A paras 1, 2(1)-(3) (Sch 4A added by the Finance Act 2000 Sch 2 paras 1, 10). As to the meaning of 'premises' see PARA 771 note 3. As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

5 Betting and Gaming Duties Act 1981 Sch 4A para 2(4) (as added: see note 4). An amusement machine licence is a 'relevant amusement machine licence' if, at any time during the alleged default period, it was in force in relation to an amusement machine provided for play on the relevant premises at that time: Sch 4A para 2(5) (as so added). The period is extended from three years to 20 years where an amusement machine has been provided for play in circumstances where: (1) a person has, by virtue of conduct engaged in for the purpose of evading any amount of amusement machine licence duty, become liable to a penalty under the Finance Act 1994 s 8 (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1208); or (2) a person has been convicted of an offence under the Betting and Gaming Duties Act 1981 s 24(6) (see PARA 782); or (3) proceedings for an offence under s 24(6) would have been commenced or continued against a person (whether or not the person assessed), but for their having been compounded under the Customs and Excise Management Act 1979 s 152(a) (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1188): Betting and Gaming Duties Act 1981 Sch 4A para 6(5)-(7) (as so added).

6 Betting and Gaming Duties Act 1981 Sch 4A para 2(6) (as added: see note 4).

7 The proper address of a person is: (1) in the case of a body corporate, its registered office or principal office; and (2) in any other case (a) his last-known place of abode or business; or (b) any vessel or aircraft to which he may belong or have lately belonged: Betting and Gaming Duties Act 1981 Sch 4A para 7(1), (5) (as added: see note 4). An item is only to be treated as posted to an address or place if it has been sent there by registered post or the recorded delivery service: Sch 4A para 7(1), (6) (as so added).

8 Betting and Gaming Duties Act 1981 Sch 4A para 2(7) (as added: see note 4). The specified persons are: (1) one or more of the persons who are or appear to be, or who at any time during the alleged default period were or appear to have been, responsible persons in relation to the relevant premises or an amusement machine provided for play on those premises; or (2) any person who is the representative of such a person: Sch 4A para 2(8) (as so added).

A person is a 'responsible person' in relation to relevant premises at a particular time if, at that time, he is or was: (a) the owner, lessee or occupier of the premises; or (b) responsible to the owner, lessee or occupier for the management of the premises; or (c) responsible for controlling the use of any amusement machine on the premises; or (d) responsible for controlling the admission of persons to the premises or providing persons resorting to the premises with any goods or services: Sch 4A para 7(1), (3) (as so added; Sch 4A para 7(3) amended by the Finance Act 2003 s 12(2)). A person is a 'responsible person' in relation to an amusement machine at a particular time if, at that time, he is or was the owner or hirer of the machine, or a party to any contract under which the machine may be, or may have been, or is or was required to be, on the relevant premises at that time: Betting and Gaming Duties Act 1981 Sch 4A para 7(1), (2) (as so added). A person's representative is his personal representative, his trustee in bankruptcy, any receiver or liquidator appointed in relation to him or any of his property, or any other person acting in a representative capacity in relation to him: Sch 4A para 7(1), (4) (as so added).

9 Betting and Gaming Duties Act 1981 Sch 4A para 3(1), (2) (as added: see note 4). The Commissioners may grant a separate default licence for each period of consecutive days which falls within the alleged default period and for which no amusement machine licence in force in relation to the unlicensed machine was produced: Sch 4A para 3(3) (as so added). They may grant a default licence in relation to an unlicensed machine even though the period of the licence would include a day or days when the machine was provided for play in contravention of s 21(1) or s 24(3) or s 24(4) (see PARAS 771, 774) on premises other than the relevant premises specified in the applicable default notice: Sch 4A para 3(4) (as so added). In such a case references to the relevant premises are to be construed in relation to any particular time as references to the premises on which the machine was provided for play at that time: Sch 4A para 3(5) (as so added).

A default licence may be granted even though no application has been made for it, and may cover a period of any length (whether or not a licence under Sch 4 could be granted for a period of that length): Sch 4A para 3(6), (7) (as so added). As to the duration of licences under Sch 4 see PARA 775.

10 Betting and Gaming Duties Act 1981 Sch 4A para 4(1), (2) (as added: see note 4).

11 Betting and Gaming Duties Act 1981 Sch 4A para 4(3) (as added: see note 4). As to rates of duty see PARA 773.

12 Betting and Gaming Duties Act 1981 Sch 4A para 4(4) (as added: see note 4).

13 Betting and Gaming Duties Act 1981 Sch 4A para 4(5) (as added: see note 4). Any period of less than a month comprised in any period or part of a period is treated as a complete month, and the amusement licence treated as granted is treated as having been granted for the complete period (or for the complete part of the period), and as surrendered on its last day: see Sch 4A para 4(6)-(8) (as so added). The grant of a default licence in relation to an unlicensed machine is, however, without prejudice to any liability arising under s 24 (see PARA 774) in relation to that machine: Sch 4A para 8 (as so added).

14 le an amount of duty charged in accordance with the Betting and Gaming Duties Act 1981 s 22 on an amusement machine licence within the meaning of s 21: see PARAS 771, 773.

15 Betting and Gaming Duties Act 1981 Sch 4A para 5(1) (as added: see note 4). As to relevant premises see the text and note 4. Where an amount has been assessed and notified to more than one responsible person (or his representative), that amount is recoverable jointly and severally from any or all of the responsible persons: Sch 4A para 5(5). It may not be paid by instalments: see Sch 4A para 5(6) (disapplying Sch 4 para 7A (see PARA 776)). Where the Commissioners have given a default notice and in consequence of so doing have granted a default licence, an assessment made in respect of the licence may not be notified to a responsible person (or his representative) at any time after the period of one year beginning with the due date specified in the default notice: Sch 4A para 6(3), (4) (as so added). Any decision that a default licence should be granted, or which is contained in an assessment that a person is liable to pay an amount of duty or as to the amount of that liability, is subject to review under the Finance Act 1994 s 14(1) (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1247): Betting and Gaming Duties Act 1981 Sch 4A para 6(1), (2) (as so added).

16 Betting and Gaming Duties Act 1981 Sch 4A para 5(2) (as added: see note 4). See also note 15.

17 Betting and Gaming Duties Act 1981 Sch 4A para 5(3), (4) (as added: see note 4). See also note 15.

UPDATE

780 Revenue and Customs enforcement powers and default licences

NOTE 15--Betting and Gaming Duties Act 1981 Sch 4A para 6(1) amended: SI 2009/56.

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781. Powers of entry and search and forfeiture.

If any officer of Revenue and Customs knows or has reasonable cause to suspect¹ that amusement machines² are or have been provided for play on any premises³, he may enter those premises without payment and inspect them, and he may require any person who is concerned in the management of the premises, or who is on the premises and appears to him to have any responsibility in their management or in the control of the admission of persons to them:

- 2739 (1) to produce or secure the production of any amusement machine licence in force in respect of the premises; or
- 2740 (2) to provide information with respect to:
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- 333. (a) any use to which the premises are or have been put; or
- 334. (b) any machine which is or has been on the premises and any game which may have been played on that machine; or
- 335. (c) the way in which the machine works or the amount payable to play it⁴.
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Where an officer finds amusement machines provided on any premises in circumstances requiring an amusement machine licence, and he is satisfied, having regard to the number and description of those machines which are authorised by the licence or licences produced to him, that there has been a contravention of the legislation relating to licensing and restrictions on provision of amusement machines⁵, then all amusement machines found on the premises are liable to forfeiture⁶.

1 The officer, it seems, must in fact so believe: see *R v Banks* [1916] 2 KB 621, CCA; *R v Harrison* [1938] 3 All ER 134, CCA. As to the meaning of 'officer' see PARA 746 note 5.

2 As to the meaning of 'amusement machine' see PARA 771.

3 As to when a machine is provided for play at premises see PARA 771 note 3.

4 Betting and Gaming Duties Act 1981 Sch 4 para 14 (amended by the Finance Act 1995 Sch 3 para 11).

5 Is a contravention of the Betting and Gaming Duties Act 1981 s 21(1) or s 24: see PARAS 771, 774.

6 Betting and Gaming Duties Act 1981 Sch 4 para 18 (amended by the Finance Act 1984 Sch 3 para 7(13); the Finance Act 1994 Sch 3 para 3; the Finance Act 1995 Sch 3 para 11).

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782. Offences and penalties.

Any person who, at the time when an amusement machine¹ is provided for play on premises² in respect of which an appropriate amusement machine licence is not in force³, or an amusement machine of a type not authorised by or in excess of the number authorised by the licence is there provided⁴, is:

- 2741 (1) the owner, lessee or occupier of the premises; or
- 2742 (2) responsible to the owner, lessee or occupier for the management of the premises; or
- 2743 (3) responsible for controlling the use of any amusement machine on the premises; or
- 2744 (4) responsible for the time being for controlling admission to the premises or for providing goods or services to persons resorting to them; or
- 2745 (5) the owner or the hirer of the machine; or
- 2746 (6) a party to any contract under which an amusement machine may, or is required to, be on the premises,

is liable to a civil penalty⁵.

If any such person as is mentioned in heads (1) to (6) above knowingly or recklessly brought about a contravention of the licensing requirement⁶, or took any steps with a view to⁷ procuring it, he is guilty of an offence and liable on summary conviction to a penalty of the prescribed sum or imprisonment for a term not exceeding six months, or to both, or on conviction on indictment to a penalty of any amount or to imprisonment for a term not exceeding two years, or to both⁸.

Any person who contravenes or fails to comply with the provisions relating to the administration of licences⁹, or with the regulations made thereunder, or who fails or refuses to comply with any requirement lawfully made of him under such provisions, is liable to a civil penalty¹⁰.

Where any of the above-mentioned offences has been committed by a body corporate, every person who was at the time a director, general manager, secretary or other similar officer of that body, or was purporting to act in any such capacity, is deemed to be guilty of that offence unless he proves that he did not consent to, or connive at, the commission of the offence and that he exercised all such diligence to prevent it as he ought to have exercised having regard to the nature of his functions in that capacity and in all the circumstances¹¹.

1 As to the meaning of 'amusement machine' see PARA 771.

2 As to when a machine is provided for play at premises see PARA 771 note 3; and as to the meaning of 'premises' see PARA 771 note 3.

3 As to the requirement for a licence see PARA 771.

4 Ie provided in contravention of the Betting and Gaming Duties Act 1981 s 21(1) or s 24: see PARAS 771, 774.

5 Betting and Gaming Duties Act 1981 s 24(5) (amended by the Finance Act 1984 Sch 3 para 6; the Finance Act 1985 Sch 5 para 5; the Finance Act 1995 Sch 3 para 5; the Finance Act 2003 s 12(1)). As to such civil penalties see the Finance Act 1994 s 9; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1218.

6 Ie a contravention of the Betting and Gaming Duties Act 1981 s 21(1) or s 24: see PARAS 771, 774.

7 These words would seem to be of wider meaning than the word 'attempting', so that a preliminary step which would not be an attempt (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 79 et seq) might constitute an offence under this provision.

8 Betting and Gaming Duties Act 1981 s 24(6) (amended by the Finance Act 1982 Sch 6 para 12; the Finance Act 1984 Sch 3 para 6; the Finance Act 1994 Sch 3 para 1; the Finance Act 1995 Sch 3 para 5). As to the prescribed sum see PARA 246 note 6.

9 Ie the Betting and Gaming Duties Act 1981 Sch 4 paras 5-18: see PARAS 775-781.

10 Betting and Gaming Duties Act 1981 Sch 4 para 16(1) (amended by the Finance Act 1985 Sch 5 para 9(2); the Finance Act 1994 Sch 3 para 1). This provision does not apply to any contravention or failure to comply with arrangements for payment of duty by instalments (see PARA 776) or to any failure or refusal to comply with a requirement made under or for the purposes of such arrangements: Betting and Gaming Duties Act 1981 Sch 4 para 16(1A) (added by the Finance Act 1995 Sch 3 para 11). As to civil penalties see note 5.

11 Betting and Gaming Duties Act 1981 s 27. As to the application of the 1981 Act to limited liability partnerships see PARA 745 note 1.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/6. TAXATION OF GAMBLING/(6) REMOTE GAMING DUTY/783. The charge to remote gaming duty.

(6) REMOTE GAMING DUTY

783. The charge to remote gaming duty.

A duty of excise known as remote gaming duty is charged on the provision of facilities¹ for remote gaming if:

- 2747 (1) the facilities are provided in reliance on a remote operating licence²; or
- 2748 (2) at least one piece of remote gambling equipment³ used in the provision of the facilities is situated in the United Kingdom⁴, whether or not the facilities are provided for use wholly or partly in the United Kingdom⁵.

For these purposes, 'remote gaming' means gaming⁶ in which persons participate by the use of the internet, telephone, television, radio or any other kind of electronic or other technology for facilitating communication⁷.

Remote gaming duty is chargeable at the rate of 15 per cent of P's remote gaming profits for an accounting period⁸, where 'P' is a person who provides facilities for remote gaming⁹. P's remote gaming profits for an accounting period are:

- 2749 (a) the amount of P's remote gaming receipts for the period¹⁰; minus
- 2750 (b) the amount of P's expenditure for the period on remote gaming winnings¹¹,

calculated in each case in accordance with the relevant¹² statutory provision¹³. In calculating P's remote gaming profits for an accounting period, no account is to be taken of amounts or prizes if, or in so far as, they relate to the provision of facilities to which an exemption¹⁴ applies¹⁵.

Where the calculation of P's remote gaming profits for an accounting period produces a negative amount, it may be carried forward in reduction of the profits of one or more later accounting periods¹⁶.

1 As to the meaning of 'provision of facilities' see the Gambling Act 2005 s 5(1)-(3); and PARA 309 (applied by the Betting and Gaming Duties Act 1981 s 26A(2)) (ss 26A-26H, 26M added by the Finance Act 2007 Sch 1 Pt 1 paras 1, 2).

2 As to the meaning of 'remote operating licence' see PARA 351 (definition applied by the Betting and Gaming Duties Act 1981 s 26A(2) (as added: see note 1)).

3 As to the meaning of 'remote gambling equipment' see PARA 615 note 10 (definition applied by the Betting and Gaming Duties Act 1981 s 26A(2) (as added: see note 1)).

4 As to the meaning of 'United Kingdom' see PARA 16 note 8.

5 Betting and Gaming Duties Act 1981 s 26B (as added: see note 1).

6 As to the meaning of 'gaming' see PARA 748 note 2.

7 Betting and Gaming Duties Act 1981 s 26A(1) (as added: see note 1). The Treasury may by order amend the definition of 'remote gaming' set out in the text; and an order may include incidental, consequential or transitional provision: s 26A(4) (as so added). At the date at which this volume states the law, no such order had been made.

8 Betting and Gaming Duties Act 1981 s 26C(1) (as added: see note 1). The following are accounting periods for the purposes of remote gaming duty: (1) the period of three months beginning with 1 January; (2) the period of three months beginning with 1 April; (3) the period of three months beginning with 1 July; and (4) the period of three months beginning with 1 October: s 26D(1) (as so added). The Commissioners for Revenue and Customs may agree with P for specified periods to be treated as accounting periods, instead of those described in s 26D(1), for purposes of remote gaming duty relating to P: s 26D(2) (as so added). The Commissioners may also by direction make transitional arrangements for the periods to be treated as accounting periods where (a) P becomes registered, or ceases to be registered, under s 26J (see PARA 786); or (b) an agreement under s 26D(2) begins or ends: s 26D(3) (as so added). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

The Finance Act 1994 ss 14-16 (review and appeal: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 1240 et seq, 1258 et seq) apply to a decision (a) to refuse a request for an agreement under the Betting and Gaming Duties Act 1981 s 26D(2); (b) to give a direction under s 26D(3); and (c) not to give such a direction: s 26M(2), (3)(a)-(c) (as so added). Such a decision is treated as an ancillary matter for the purposes of the Finance Act 1994 ss 14-16: Betting and Gaming Duties Act 1981 s 26M(4) (as so added).

9 See the Betting and Gaming Duties Act 1981 s 26A(3) (as added: see note 1).

10 The amount of P's remote gaming receipts for an accounting period is the aggregate of (1) amounts falling due to P in that period in respect of entitlement to use facilities for remote gaming provided by P; and (2) amounts staked, or falling due to be paid, in that period by a user of facilities for remote gaming provided by P, if or in so far as responsibility for paying any amount won by the user falls on P (or a person with whom P is connected or has made arrangements): Betting and Gaming Duties Act 1981 s 26E(1) (as added: see note 1). Amounts in respect of value added tax must be ignored for these purposes: s 26E(2) (as so added). The Treasury may by order provide that where a person who uses facilities ('U') relies on an offer which waives payment or permits payment of less than the amount which would have been required to be paid without the offer, U is to be treated for these purposes as having paid that amount: s 26E(3) (as so added). At the date at which this volume states the law, no such order had been made.

11 The amount of P's expenditure on remote gaming winnings for an accounting period is the aggregate of the value of prizes provided by P in that period which have been won (at any time) by persons using facilities for remote gaming provided by P: Betting and Gaming Duties Act 1981 s 26F(1) (as added: see note 1). Prizes provided by P to one user on behalf of another are not to be treated as prizes provided by P: s 26F(2) (as so added). A reference to providing a prize to a user ('U') includes a reference to crediting money in respect of gaming winnings by U to an account if U is notified that the money is being held in the account, and that U is entitled to withdraw it on demand: s 26F(3) (as so added). The return of a stake is to be treated as the provision of a prize: s 26F(4) (as so added). Where P participates in arrangements under which a number of persons who provide facilities for remote gaming contribute towards a fund which is wholly used to provide prizes in connection with the use of those facilities (sometimes described as arrangements for 'linked progressive jackpot games'): (1) the making by P of a contribution which relates to the provision by P of facilities for remote gaming is to be treated as the provision of a prize; and (2) the award of a prize from the fund is not to be treated as the provision of a prize by P: s 26F(5) (as so added). Where P credits the account of a user of facilities provided by P (otherwise than as described in s 26F(3)), the credit is to be treated as the provision of a prize; but the Commissioners may direct that this is not to apply in a specified case or class of cases: s 26F(6) (as so added).

The Finance Act 1994 ss 14-16 (review and appeal: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 1240 et seq, 1258 et seq) apply to a decision to direct that the Betting and Gaming Duties Act 1981 s 26F(6) is not to apply in a specified case: s 26M(2), (3)(d) (as so added). Such a decision is treated as an ancillary matter for the purposes of the Finance Act 1994 ss 14-16: Betting and Gaming Duties Act 1981 s 26M(4) (as so added).

Section 20(2)-(6) (expenditure on winnings: see PARA 766) applies with any necessary modifications for the purpose of remote gaming duty as for the purpose of bingo duty: s 26F(7) (as so added).

12 Ie in accordance with the Betting and Gaming Duties Act 1981 s 26E (see note 10) or s 26F (see note 11).

13 See the Betting and Gaming Duties Act 1981 s 26C(2) (as added: see note 1).

14 Ie an exemption under or by virtue of the Betting and Gaming Duties Act 1981 s 26H: see PARA 784.

15 Betting and Gaming Duties Act 1981 s 26H(5) (as added: see note 1).

16 Betting and Gaming Duties Act 1981 s 26G (as added: see note 1).

UPDATE

783-784 The charge to remote gaming duty, Exemptions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

783 The charge to remote gaming duty

NOTES 8, 11--References to Finance Act 1994 ss 14-16 are now to ss 13A, 14-16: Betting and Gaming Duties Act 1981 s 26M(2) (amended by SI 2009/56).

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784. Exemptions.

Remote gaming duty is not to be charged¹ in respect of the provision of facilities² for remote gaming³ if and in so far as the provision is charged with another gambling tax⁴, or the use of the facilities is charged with another gambling tax⁵. Nor is remote gaming duty to be charged in respect of the provision of facilities for remote gaming if and in so far as the provision would be charged with another gambling tax but for an express exception, or the use of the facilities would be charged with another gambling tax but for an express exception⁶.

The Treasury may by order confer an exemption from remote gaming duty, or remove or vary, whether or not by textual amendment, an exemption under these provisions⁷.

1 As to the charge to remote gaming duty see PARA 783.

2 As to the meaning of 'provision of facilities' see the Gambling Act 2005 s 5(1)-(3); and PARA 309 (applied by the Betting and Gaming Duties Act 1981 s 26A(2)) (ss 26A, 26H added by the Finance Act 2007 Sch 1 Pt 1 paras 1, 2).

3 As to the meaning of 'remote gaming' see PARA 783.

4 For these purposes, 'gambling tax' means (1) amusement machine licence duty (see PARAS 771-782); (2) bingo duty (see PARAS 766-770); (3) gaming duty (see PARAS 759-765); (4) general betting duty (see PARAS 748-752, 757-758); (5) lottery duty (see PARAS 789-793); and (6) pool betting duty (see PARAS 753-758): Betting and Gaming Duties Act 1981 s 26H(3) (as added: see note 2).

5 Betting and Gaming Duties Act 1981 s 26H(1) (as added: see note 2).

6 Betting and Gaming Duties Act 1981 s 26H(2) (as added: see note 2).

7 Betting and Gaming Duties Act 1981 s 26H(4) (as added: see note 2). At the date at which this volume states the law, no such order had been made.

UPDATE

783-784 The charge to remote gaming duty, Exemptions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/6. TAXATION OF GAMBLING/(6) REMOTE GAMING DUTY/785. Liability to pay remote gaming duty.

785. Liability to pay remote gaming duty.

P is liable for any remote gaming duty¹ charged on P's remote gaming profits² for an accounting period³, where 'P' is a person who provides facilities for remote gaming⁴. If P is a body corporate, P and P's directors are jointly and severally liable for any remote gaming duty charged on P's remote gaming profits for an accounting period⁵.

The Commissioners for Revenue and Customs may make regulations about payment of remote gaming duty⁶. The regulations may, in particular, make provision about:

- 2751 (1) timing⁷;
- 2752 (2) instalments⁸;
- 2753 (3) methods of payment⁹;
- 2754 (4) when payment is to be treated as made¹⁰;
- 2755 (5) the process and effect of assessments by the Commissioners of amounts due¹¹.

Subject to such regulations, the Commissioners may estimate the amount due from any person on account of remote gaming duty where they are unable to ascertain the proper amount because of failure to keep required records or to take required steps¹².

1 As to the charge to remote gaming duty see PARA 783.

2 As to the calculation of remote gaming profits see PARA 783.

3 Betting and Gaming Duties Act 1981 s 26I(1) (ss 26A, 26I, 26M added by the Finance Act 2007 Sch 1 Pt 1). As to the meaning of 'accounting period' see PARA 783 note 8.

4 See the Betting and Gaming Duties Act 1981 s 26A(3) (as added: see note 3). The Finance Act 1994 ss 14-16 (review and appeal: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 1240 et seq, 1258 et seq) apply in relation to liability to pay remote gaming duty: Betting and Gaming Duties Act 1981 s 26M(1) (as so added).

5 Betting and Gaming Duties Act 1981 s 26I(2) (as added: see note 3).

6 Betting and Gaming Duties Act 1981 s 26I(3) (as added: see note 3). For the current regulations see the Remote Gaming Duty Regulations 2007, SI 2007/2192, which came into force on 1 September 2007: reg 1. As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

7 Betting and Gaming Duties Act 1981 s 26I(3)(a) (as added: see note 3). Payment must be made no later than when the return for the corresponding accounting period must be made (see PARA 787): Remote Gaming Duty Regulations 2007, SI 2007/2192, reg 6(2). As to the persons who must make the payment see reg 6(1).

8 Betting and Gaming Duties Act 1981 s 26I(3)(b) (as added: see note 3).

9 Betting and Gaming Duties Act 1981 s 26I(3)(c) (as added: see note 3). As to methods of payment see the Remote Gaming Duty Regulations 2007, SI 2007/2192, reg 6(3)-(5).

10 Betting and Gaming Duties Act 1981 s 26I(3)(d) (as added: see note 3); and see the Remote Gaming Duty Regulations 2007, SI 2007/2192, reg 6(6).

11 Betting and Gaming Duties Act 1981 s 26I(3)(e) (as added: see note 3).

12 See the Betting and Gaming Duties Act 1981 s 26I(4) (as added: see note 3), applying the Finance Act 1994 s 12. See further **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1231.

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786. Registration.

The Commissioners for Revenue and Customs must maintain a register of persons who provide facilities¹ for remote gaming² in respect of which remote gaming duty³ may be chargeable⁴. A person may not provide facilities for remote gaming in respect of which remote gaming duty may be chargeable without being registered⁵.

The Commissioners may make regulations about registration⁶; and in particular, the regulations may include provision, which may include provision conferring a discretion on the Commissioners, about:

- 2756 (1) the procedure for applying for registration⁷;
- 2757 (2) the timing of applications⁸;
- 2758 (3) the information to be provided⁹;
- 2759 (4) notification of changes¹⁰;
- 2760 (5) de-registration¹¹;
- 2761 (6) re-registration after a person ceases to be registered¹².

The regulations may also:

- 2762 (a) require a registered person to give notice to the Commissioners before applying for a remote operating licence¹³;
- 2763 (b) permit the Commissioners to make registration, or continued registration, of a foreign person¹⁴ conditional; and may, in particular, permit the Commissioners to require the provision of security for payment of remote gaming duty and the appointment of a United Kingdom representative with responsibility for discharging liability to remote gaming duty¹⁵;
- 2764 (c) include provision for the registration of groups of persons, and may provide for the modification of the statutory provisions about remote gaming duty¹⁶ in their application to groups¹⁷;
- 2765 (d) make provision which applies generally or only for specified purposes, and make different provision for different purposes¹⁸.

Registration of a person ('P') in relation to P's provision of facilities for remote gaming in respect of which remote gaming duty may be chargeable is conditional on a successful application by P to the Commissioners¹⁹. The Commissioners need not register P as of earlier than the fourteenth day after the one on which they receive that application; but if P is a foreign person they need not register P as of any day in the month that starts on the day they receive that application²⁰. A person whom the Commissioners have registered in relation to the provision of such facilities must notify them, in writing, of any change to the information given on the application, including failing or ceasing to provide such facilities; and such notification must be delivered to the Commissioners no later than the fourteenth day after the change in question²¹. A person whom the Commissioners have registered in relation to the provision of such facilities may be deregistered by them for failing or ceasing to provide such facilities²². The Commissioners may make the registration or continued registration of a foreign person conditional on that person ('P') providing what the Commissioners consider adequate security for payment of any remote gaming duty for which P is or may become liable, and appointing a

person other than a foreign person (and whom the Commissioners otherwise consider suitable for the purpose) as a representative with responsibility for discharging P's liability for payment of remote gaming duty²³.

1 As to the meaning of 'provision of facilities' see the Gambling Act 2005 s 5(1)-(3); and PARA 309 (applied by the Betting and Gaming Duties Act 1981 s 26A(2)) (ss 26A, 26J, 26M added by the Finance Act 2007 Sch 1 Pt 1 paras 1, 2).

2 As to the meaning of 'remote gaming' see PARA 783.

3 As to the charge to remote gaming duty see PARA 783.

4 Betting and Gaming Duties Act 1981 s 26J(1) (as added: see note 1). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

5 Betting and Gaming Duties Act 1981 s 26J(2) (as added: see note 1).

6 Betting and Gaming Duties Act 1981 s 26J(3) (as added: see note 1). For the current regulations see the Remote Gaming Duty Regulations 2007, SI 2007/2192, which came into force on 1 September 2007: reg 1.

The Finance Act 1994 ss 14-16 (review and appeal: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 1240 et seq, 1258 et seq) apply to a decision under such regulations: s 26M(2), (3)(e) (as so added). Such a decision is treated as an ancillary matter for the purposes of the Finance Act 1994 ss 14-16: Betting and Gaming Duties Act 1981 s 26M(4) (as so added).

7 Betting and Gaming Duties Act 1981 s 26J(3)(a) (as added: see note 1).

8 Betting and Gaming Duties Act 1981 s 26J(3)(b) (as added: see note 1).

9 Betting and Gaming Duties Act 1981 s 26J(3)(c) (as added: see note 1).

10 Betting and Gaming Duties Act 1981 s 26J(3)(d) (as added: see note 1).

11 Betting and Gaming Duties Act 1981 s 26J(3)(e) (as added: see note 1).

12 Betting and Gaming Duties Act 1981 s 26J(3)(f) (as added: see note 1).

13 Betting and Gaming Duties Act 1981 s 26J(4) (as added: see note 1). As to the meaning of 'remote operating licence' see PARA 351 (definition applied by the Betting and Gaming Duties Act 1981 s 26A(2) (as added: see note 1)).

14 For these purposes, 'foreign person' means a person who (1) in the case of an individual, is not usually resident in the United Kingdom; (2) in the case of a body corporate, does not have an established place of business in the United Kingdom; and (3) in any other case, does not include an individual who is usually resident in the United Kingdom: Betting and Gaming Duties Act 1981 s 26J(5) (as added: see note 1). As to the meaning of 'United Kingdom' see PARA 16 note 8.

15 Betting and Gaming Duties Act 1981 s 26J(5) (as added: see note 1). The Finance Act 1994 ss 14-16 (review and appeal: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 1240 et seq, 1258 et seq) apply to a decision about security by virtue of the Betting and Gaming Duties Act 1981 s 26J(5)(a): s 26M(2), (3)(f) (as so added). Such a decision is treated as an ancillary matter for the purposes of the Finance Act 1994 ss 14-16: Betting and Gaming Duties Act 1981 s 26M(4) (as so added).

16 In the provisions of the Betting and Gaming Duties Act 1981 ss 26A-26N: see PARAS 783-785; the text and notes 1-15, 17-18; and PARAS 787-788.

17 Betting and Gaming Duties Act 1981 s 26J(7) (as added: see note 1). As to registration as a member of a group see the Remote Gaming Duty Regulations 2007, SI 2007/2192, reg 4.

18 Betting and Gaming Duties Act 1981 s 26J(8) (as added: see note 1).

19 Remote Gaming Duty Regulations 2007, SI 2007/2192, reg 3(1). For the prescribed form of application see reg 3(3), Schedule, Form GD120.

20 Remote Gaming Duty Regulations 2007, SI 2007/2192, reg 3(2).

21 Remote Gaming Duty Regulations 2007, SI 2007/2192, reg 3(4).

22 Remote Gaming Duty Regulations 2007, SI 2007/2192, reg 3(5).

23 Remote Gaming Duty Regulations 2007, SI 2007/2192, reg 3(6).

UPDATE

786-787 Registration, Returns

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/6. TAXATION OF GAMBLING/(6) REMOTE GAMING DUTY/787. Returns.

787. Returns.

The Commissioners for Revenue and Customs may make regulations requiring persons who provide facilities¹ for remote gaming² in respect of which remote gaming duty may be chargeable³ to make returns to the Commissioners in respect of their activities⁴. The regulations may make provision which applies generally or only for specified purposes, and may make different provision for different purposes⁵. In particular, they may make provision about:

- 2766 (1) liability to make a return⁶;
- 2767 (2) timing, form and content of a return⁷;
- 2768 (3) method of making a return⁸;
- 2769 (4) declarations and authentication⁹; and
- 2770 (5) when a return is to be treated as made¹⁰.

1 As to the meaning of 'provision of facilities' see the Gambling Act 2005 s 5(1)-(3); and PARA 309 (applied by the Betting and Gaming Duties Act 1981 s 26A(2)) (ss 26A, 26K added by the Finance Act 2007 Sch 1 Pt 1 paras 1, 2).

2 As to the meaning of 'remote gaming' see PARA 783.

3 As to the charge to gaming duty see PARA 783.

4 Betting and Gaming Duties Act 1981 s 26K(1) (as added: see note 1). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq. For the current regulations see the Remote Gaming Duty Regulations 2007, SI 2007/2192, which came into force on 1 September 2007: reg 1.

5 Betting and Gaming Duties Act 1981 s 26K(3) (as added: see note 1).

6 Betting and Gaming Duties Act 1981 s 26K(2)(a) (as added: see note 1). As to the persons liable to make a return see the Remote Gaming Duty Regulations 2007, SI 2007/2192, reg 5(1).

7 See the Betting and Gaming Duties Act 1981 s 26K(2)(b)-(d) (as added: see note 1). As to the prescribed form and content of a return see the Remote Gaming Duty Regulations 2007, SI 2007/2192, reg 5(2), Schedule, Form GD121. A return must be delivered to the Commissioners no later than the thirtieth day after the end of the relevant accounting period, and if that day is not a business day, it must be delivered no later than the most recent business day before then: reg 5(4). For these purposes, a 'business day' is any day except (1) Saturday, Sunday, Good Friday or Christmas Day; (2) a bank holiday under the Banking and Financial Dealings Act 1971; (3) a day appointed by Royal proclamation as a public fast or thanksgiving day; (4) a day declared by an order under s 2(1) to be a non-business day: Remote Gaming Duty Regulations 2007, SI 2007/2192, reg 5(4).

8 Betting and Gaming Duties Act 1981 s 26K(2)(e) (as added: see note 1). The return must be delivered to the Commissioners at the address specified on the prescribed form: Remote Gaming Duty Regulations 2007, SI 2007/2192, reg 5(3).

9 See the Betting and Gaming Duties Act 1981 s 26K(2)(f), (g) (as added: see note 1).

10 Betting and Gaming Duties Act 1981 s 26K(2)(h) (as added: see note 1). The return is treated as made when it is received by the Commissioners at the address specified on the prescribed form: Remote Gaming Duty Regulations 2007, SI 2007/2192, reg 5(3).

UPDATE

786-787 Registration, Returns

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LICENSING AND GAMBLING (VOLUME 67 (2008) 5TH EDITION, PARAS 1-546; VOLUME 68 (2008) 5TH EDITION, PARAS 547-793)/6. TAXATION OF GAMBLING/(6) REMOTE GAMING DUTY/788. Offences and penalties.

788. Offences and penalties.

A person who contravenes a provision made by or by virtue of the statutory provisions relating to liability to pay remote gaming duty, registration for remote gaming duty and returns in respect of remote gaming duty¹ is liable to a civil penalty².

A person who is knowingly concerned in, or in taking steps with a view to³, the fraudulent evasion of remote gaming duty⁴ commits an offence⁵ and is liable:

- 2771 (1) on summary conviction to a penalty of the statutory maximum, or, if greater, of three times the duty which is unpaid or the payment of which is sought to be avoided, or to imprisonment for a term not exceeding six months, or to both⁶;
 2772 (2) on conviction on indictment to a penalty of any amount, or to imprisonment for a term not exceeding seven years, or to both⁷.

¹ The provision made by or by virtue of the Betting and Gaming Duties Act 1981 ss 26L-26K: see PARAS 785-787.

² See the Betting and Gaming Duties Act 1981 s 26L(1) (s 26L added by the Finance Act 2007 Sch 1 Pt 1). As to civil penalties see the Finance Act 1994 s 9; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1218. Such conduct attracts daily penalties under s 9: see the Betting and Gaming Duties Act 1981 s 26L(1)(b) (as so added).

³ These words would seem to be of wider meaning than the word 'attempting', so that a preliminary step which would not be an attempt (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 79 et seq) might constitute an offence under this provision.

⁴ As to the charge to remote gaming duty see PARA 783.

⁵ Betting and Gaming Duties Act 1981 s 26L(2) (as added: see note 2).

⁶ Betting and Gaming Duties Act 1981 s 26L(3) (as added: see note 2). As to the statutory maximum see PARA 247 note 13.

⁷ Betting and Gaming Duties Act 1981 s 26L(3) (as added: see note 4).

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(7) LOTTERY DUTY

789. The charge to lottery duty.

Lottery duty is chargeable on the taking in the United Kingdom¹ of a ticket or chance in a lottery, and, in such cases as may be determined by regulations made by the Commissioners for Revenue and Customs, on the taking outside the United Kingdom of a ticket or chance in a lottery promoted² in the United Kingdom³. Lottery duty is not chargeable in respect of:

- 2773 (1) a lottery that constitutes a game of bingo (or any version of bingo, by whatever name called)⁴;
- 2774 (2) in Great Britain, in respect of a lottery which is an exempt lottery within the meaning of the Gambling Act 2005⁵.

The amount of the lottery duty is equal to 12 per cent of the consideration⁶ given for the ticket or chance in respect of which it is chargeable⁷.

The imposition of lottery duty does not make lawful anything that is otherwise unlawful⁸.

1 As to the meaning of 'United Kingdom' see PARA 16 note 8.

2 For these purposes, 'promotion', in relation to a lottery, includes the conduct of the lottery, and 'promoted' is to be read accordingly: Finance Act 1993 s 40(1).

3 Finance Act 1993 ss 24(1), 40(1). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq. Part I Ch II (ss 24-40) (see the text and notes 4-7; and PARAS 790-793) applies in relation to lotteries promoted on behalf of the Crown in pursuance of any enactment as it applies in relation to lotteries not so promoted: s 40(2). As to lotteries generally see PARAS 317, 642-647, 659-664; and as to the National Lottery see PARA 687 et seq.

Regulations may make provision for determining when and where the taking of a ticket or chance in a lottery is to be treated as occurring for these purposes: s 24(2).

Where any ticket or chance is taken outside the United Kingdom in the National Lottery the taking of that ticket or chance is treated as having occurred at the principal place of business within the United Kingdom of the registered promoter: Lottery Duty Regulations 1993, SI 1993/3212, reg 9 (amended by SI 2002/2355). As to lottery duty payable on any lottery that forms part of the National Lottery in which 'instant chances' are taken see the Lottery Duty (Instant Chances) Regulations 1995, SI 1995/2815; and PARA 790.

4 Finance Act 1993 s 24(3).

5 Finance Act 1993 s 24(4) (amended by the Finance Act 2007 Sch 25 Pt 3 paras 13, 14(a)). As to the meaning of 'exempt lottery' for the purposes of the Gambling Act 2005 see PARA 643 note 3; and as to such lotteries see PARA 659 et seq. The Treasury may by order amend the Finance Act 1993 s 24(4) so as to add to the descriptions of lottery for the time being mentioned therein, so as to omit any of them or so as to substitute a different description of lottery for any of them: s 24(5). At the date at which this volume states the law, no such order had been made.

6 The aggregate of everything paid or given by (or debited to the account of) the person taking the ticket or chance for, or on account of, or in connection with, the ticket or chance is to be taken to be the consideration for it: Finance Act 1993 s 25(2). If, however, a price is shown on a lottery ticket or any other document providing evidence of the taking of a ticket or chance in a lottery and either the consideration given for the ticket or chance is of lesser value than the price shown (or is of no value), or no consideration is so given, consideration to the value of the price shown is to be taken to be given for the ticket or chance: s 25(3).

'Document' includes a document of any kind whatsoever and, in particular, a record kept by means of a computer: s 40(1).

7 Finance Act 1993 s 25(1).

8 Finance Act 1993 s 40(3).

UPDATE

789 The charge to lottery duty

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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790. Payment of duty.

Lottery duty is payable by the promoter¹ of the lottery². The lottery duty chargeable on the taking of a ticket or chance in a lottery becomes due and payable³ at the time when the ticket or chance is taken⁴. Where a ticket or chance is taken in a lottery that is part of the National Lottery, other than a ticket or chance where, before it is taken, it has been determined whether or not it will win, the taking of the ticket or chance is treated as occurring on the day the lottery takes place⁵. For the purposes of payment of lottery duty in the case of a lottery that forms part of the National Lottery in which instant chances⁶ are taken, an instant chance is treated as having been taken when the batch⁷ of which it forms part is settled⁸. A batch is settled when either the registered promoter deems that batch to have been settled, or 30 days have elapsed since that batch was first activated⁹, whichever is the earlier¹⁰.

Regulations made by the Commissioners for Revenue and Customs may require payments, of amounts determined by or under the regulations, to be made on account of any lottery duty that may become due in respect of a lottery of a description specified in the regulations that is being or is to be promoted¹¹.

Where a lottery does not take place, but tickets or chances in that lottery are taken, a person may make written application to the Commissioners for duty he has paid to be refunded in full¹². No refund is to be paid until the claimant has complied with the prescribed requirements¹³ and the Commissioners must cancel any entitlement to refund, or reduce the amount of that entitlement, if it appears to them that a refund application is untrue in any material particular¹⁴. If the Commissioners so cancel any entitlement to refund and that refund has, at the time of cancellation, already been paid, they are entitled to recover the amount of that refund from the claimant as if that amount was an amount of lottery duty due and payable on the date of cancellation¹⁵. In the case of a lottery that forms part of the National Lottery in which instant chances are taken, where a batch has been settled but at the conclusion of the lottery not all the chances in that batch have actually been taken, the registered promoter is entitled to a duty credit of the amount paid on account of lottery duty for the instant chances that have not actually been taken¹⁶.

1 This is subject to regulations made by the Commissioners for Revenue and Customs, which may require payment by a person who occupies or has occupied a position of responsibility in relation to the lottery, instead of by the promoter: see the Finance Act 1993 s 27(2). Thus any lottery duty payable in respect of the National Lottery must be paid by the person licensed under the National Lottery etc Act 1993 s 5 (see PARAS 691, 694) instead of by the promoter: Lottery Duty Regulations 1993, SI 1993/3212, reg 8 (amended by SI 2007/870). As to the meaning of 'promoter' see PARA 789 note 2. As to lotteries generally see PARAS 317, 642-647, 659-664; and as to the National Lottery see PARA 687 et seq. As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

2 Finance Act 1993 s 27(1). Any lottery duty that is payable in respect of a lottery may be recovered jointly and severally from: (1) the promoter of the lottery; (2) any other person who occupies or has occupied a position of responsibility in relation to the lottery or who has or has had any degree of control over any of its proceeds; and (3) where the promoter or a person within head (2) above is a body corporate, any director of that body corporate: s 27(3).

3 Is subject to any regulations made by the Commissioners under the Finance Act 1993 s 26(2). Such regulations may provide for the payment of any lottery duty due in respect of a lottery of a description specified in the regulations to be deferred, subject to any conditions or requirements that may be imposed by or under the regulations: Finance Act 1993 s 26(2). A registered promoter may defer payment of lottery duty which has become due and payable upon his complying with such conditions or requirements as the Commissioners think

fit to impose: Lottery Duty Regulations 1993, SI 1993/3212, reg 6(1). Where payment of any lottery duty is deferred it must be paid using either the Clearing House Automated Payment System ('CHAPS') or the Bankers' Automated Clearing Services ('BACS'), and payment must be credited to such bank account as the Commissioners may require on or before the day by which the return showing that duty must be furnished: reg 6(2) (substituted by SI 2001/4021).

4 Finance Act 1993 s 26(1).

5 Lottery Duty Regulations 1993, SI 1993/3212, reg A9 (added by SI 2002/2355).

6 'Instant chance' means a ticket or chance where, before it is taken, it has been determined whether or not it will win: Lottery Duty (Instant Chances) Regulations 1995, SI 1995/2815, reg 3.

7 'Batch' means a number of instant chances of between 50 and 500 (determined by the registered promoter), provided that that number produces a whole number when divided by 50: Lottery Duty (Instant Chances) Regulations 1995, SI 1995/2815, reg 3.

8 Lottery Duty (Instant Chances) Regulations 1995, SI 1995/2815, reg 5(1).

9 A batch is activated when either the registered promoter deems that batch to be activated, or any instant chance in that batch is actually taken, whichever is the earlier: Lottery Duty (Instant Chances) Regulations 1995, SI 1995/2815, reg 5(3).

10 Lottery Duty (Instant Chances) Regulations 1995, SI 1995/2815, reg 5(2) (amended by SI 2002/2354).

11 Finance Act 1993 s 26(3). See the Lottery Duty (Instant Chances) Regulations 1995, SI 1995/2815, reg 5, cited in notes 7-10.

12 See the Lottery Duty Regulations 1993, SI 1993/3212, reg 7(1), (2). For the method of making the application see reg 7(3), (4), Sch 4 (reg 7(3) amended by SI 2001/4021).

13 In the requirements of the Lottery Duty Regulations 1993, SI 1993/3212, reg 7: see note 12.

14 Lottery Duty Regulations 1993, SI 1993/3212, reg 7(5).

15 Lottery Duty Regulations 1993, SI 1993/3212, reg 7(6).

16 Lottery Duty (Instant Chances) Regulations 1995, SI 1995/2815, reg 6(1), (2). The Lottery Duty Regulations 1993, SI 1993/3212, reg 7, Sch 4 apply, with prescribed modifications, to duty credit as they apply to refunds of duty: see the Lottery Duty (Instant Chances) Regulations 1995, SI 1995/2815, reg 6(3)-(5).

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791. Management of lottery duty and registration of promoters.

Lottery duty is under the care and management of the Commissioners for Revenue and Customs¹. Regulations made by the Commissioners may provide for any matter for which provision appears to them to be necessary or expedient for the administration or enforcement of lottery duty or for the protection of the revenue derived from lottery duty².

A lottery in respect of which lottery duty is chargeable (or, on the taking of a ticket or chance, will be chargeable) must not be promoted³ in the United Kingdom⁴ unless the chargeable person⁵ is registered with the Commissioners⁶. Subject to the prescribed requirements⁷, the Commissioners must register any applicant who satisfies them that he will be the chargeable person in relation to a lottery that is to be promoted, and must not remove any person from the register unless it appears to them that no lottery is being or is to be promoted in relation to which he is or will be the chargeable person⁸. A person may not be removed from the register during the course of promotion of a lottery in relation to which he is the chargeable person⁹.

Every registered promoter must furnish a return to the Commissioners not later than the thirteenth day following the end of every accounting period¹⁰.

The price of every ticket must be stated on the ticket, and the price of every chance must be stated on any document which evidences the taking of that chance and which is given to the person taking that chance¹¹. Every ticket or chance must be allocated a unique reference number¹². The unique reference for each instant chance¹³ must be arranged in a sequence that identifies it as part of a particular batch¹⁴.

1 Finance Act 1993 s 28(1). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq. As to the charge to lottery duty see PARA 789.

2 Finance Act 1993 s 28(2). See the text and notes 10-14.

3 As to the meaning of 'promoted' see PARA 789 note 2.

4 As to the meaning of 'United Kingdom' see PARA 16 note 8.

5 The 'chargeable person', in relation to a lottery, is either the promoter of the lottery or such other person as may be specified in regulations made under the Finance Act 1993 s 27(2) (see PARA 790): s 29(2). As to lotteries generally see PARAS 317, 642-647, 659-664; and as to the National Lottery see PARA 687 et seq.

6 Finance Act 1993 s 29(1). Regulations may be made as to the time and manner of applications for registration: see s 29(3), (4). Every person required to be registered must apply to the Commissioners for registration on a form provided by them for that purpose and must provide with his application a copy of any licence issued to him under the National Lottery etc Act 1993: Lottery Duty Regulations 1993, SI 1993/3212, reg 3(1). Any such application must satisfy the requirements of Schs 1-3: see regs 3-5.

7 le subject to the regulations mentioned in note 6.

8 Finance Act 1993 s 29(5).

9 See the Finance Act 1993 s 29(6).

10 See the Lottery Duty Regulations 1993, SI 1993/3212, reg 14 (amended by SI 2001/4021). A registered promoter may furnish a return using electronic communications: see the Lottery Duty Regulations 1993, SI 1993/3212, reg 14A (added by SI 2001/4021). Every application for registration and every return must contain a declaration that the particulars and statements contained within it are true and complete and that any statement or other document accompanying that document is also true and complete, and must be signed in

accordance with the regulations: see the Lottery Duty Regulations 1993, SI 1993/3212, reg 15 (amended by SI 2001/4021).

11 Lottery Duty Regulations 1993, SI 1993/3212, regs 10, 11.

12 See the Lottery Duty Regulations 1993, SI 1993/3212, reg 12. Except in the case of tickets which are not printed and allocated unique reference numbers until the time they are taken, a registered promoter who intends to destroy lottery tickets must give seven clear days' notice to the Commissioners of the unique reference numbers of tickets to be destroyed: reg 13.

13 As to the meaning of 'instant chance' see PARA 790 note 6.

14 Lottery Duty (Instant Chances) Regulations 1995, SI 1995/2815, reg 4. As to the meaning of 'batch' see PARA 790 note 7.

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792. Offences and penalties.

A person who is knowingly concerned in the fraudulent evasion (by him or another person) of lottery duty¹, or in taking steps with a view² to such fraudulent evasion, is guilty of an offence and liable:

- 2775 (1) on summary conviction, to a penalty of the statutory maximum or, if it is greater, treble the amount of duty evaded or sought to be evaded, or to imprisonment for a term not exceeding six months, or to both; or
- 2776 (2) on conviction on indictment, to a penalty of any amount, or to imprisonment for a term not exceeding seven years, or to both³.

A person who, in connection with lottery duty, makes a statement that he knows to be false in a material particular or recklessly makes a statement that is false in a material particular, or, with intent to deceive, makes use of a book, account, return or other document that is false in a material particular, is guilty of an offence and liable on summary conviction to a penalty of the statutory maximum, or to imprisonment for a term not exceeding six months, or to both, or on conviction on indictment to a penalty of any amount, or to imprisonment for a term not exceeding two years, or to both⁴.

A person who fails to pay lottery duty⁵ at the time it becomes due is liable to a civil penalty⁶, as is a person who contravenes or does not comply with regulations made by the Commissioners for Revenue and Customs⁷ for the administration or enforcement of lottery duty or the protection of the revenue derived from it⁸.

A person who promotes or attempts to promote a lottery without being registered is guilty of an offence and liable on summary conviction to a penalty of the statutory maximum, or to imprisonment for a term not exceeding six months, or to both, or on conviction on indictment to a penalty of any amount, or to imprisonment for a term not exceeding two years, or to both⁹. A person who contravenes or fails to comply with any prescribed registration requirements¹⁰ is liable to a civil penalty¹¹.

In the case of an offence by a body corporate, every person who at the date of the commission of the offence is a director, manager, secretary or other similar officer of that body (or is purporting to act as such) is also guilty of the offence, unless it was committed without his consent or connivance, and he has exercised all such diligence to prevent its commission as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances¹².

Where a person takes action in pursuance of instructions of the Commissioners for Revenue and Customs given in connection with the enforcement of the provisions relating to lottery duty¹³, and that person would by doing so otherwise be committing an offence under any enactment relating to lotteries, he is not guilty of that offence¹⁴.

A certificate of the Commissioners:

- 2777 (a) that a person was or was not, at any date, registered as a chargeable person in relation to a lottery¹⁵;
- 2778 (b) that any return required by the relevant regulations¹⁶ had not been made at any date; or

2779 (c) that any lottery duty shown as due in a return made in pursuance of such regulations or in any assessment made under the Finance Act 1994¹⁷ had not been paid at any date;

is sufficient evidence of that fact until the contrary is proved¹⁸.

1 As to the charge to lottery duty see PARA 789.

2 These words would seem to be of wider meaning than the word 'attempting', so that a preliminary step which would not be an attempt (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 79 et seq) might constitute an offence under this provision.

3 Finance Act 1993 s 31(1), (2). Additionally, any goods used in the promotion of, or in any other way related to, the lottery to which the fraudulent evasion related are liable to forfeiture: s 33(1), (2)(a). As to the statutory maximum see PARA 247 note 13.

4 Finance Act 1993 s 31(3), (4). Additionally, any goods used in the promotion of, or in any other way related to, the lottery to which the false statement or document related are liable to forfeiture: s 33(1), (2)(b). As to the meaning of 'document' see PARA 789 note 6.

5 Ie in accordance with the Finance Act 1993 s 27(1) or regulations under s 27(2): see PARA 790.

6 Finance Act 1993 s 27(4) (amended by the Finance Act 1994 Sch 4 para 67). As to such civil penalties see the Finance Act 1994 s 9; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1218.

7 Ie regulations made under the Finance Act 1993 s 28: see PARA 791. As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

8 See the Finance Act 1993 s 28(3) (amended by the Finance Act 1994 Sch 4 para 68).

9 Finance Act 1993 s 29(7).

10 Ie any requirements imposed by regulations under s 29(3)(c): see PARA 791.

11 See the Finance Act 1993 s 29(8) (amended by the Finance Act 1994 Sch 4 para 68).

12 Finance Act 1993 s 32.

13 Ie the Finance Act 1993 Pt I Ch II (ss 24-41): see PARAS 789-792; the text and notes 1-12; and PARA 793.

14 Finance Act 1993 s 34.

15 Ie registered under the Finance Act 1993 s 29: see PARA 791.

16 Ie regulations under the Finance Act 1993 Pt I Ch II.

17 Ie under the Finance Act 1994 s 12: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1231.

18 Finance Act 1993 s 35(1). A photograph of any document furnished to the Commissioners for the purposes of Pt I Ch II and certified by them to be such a photograph is admissible in any proceedings, whether civil or criminal, to the same extent as the document itself: s 35(2). Any document purporting to be a certificate under s 35(1) or (2) is to be taken to be such a certificate until the contrary is proved: s 35(3).

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793. Disclosure of information.

Notwithstanding any obligation not to disclose information that would otherwise apply, the Commissioners for Revenue and Customs¹ may make such disclosure to the Secretary of State², to the Gambling Commission³ or to an authorised officer of the Secretary of State or of the Gambling Commission for the purposes of assisting the Secretary of State or the Gambling Commission, as the case may be, in the performance of duties imposed by or under any enactment in relation to lotteries⁴. Similarly, the Secretary of State, the Gambling Commission, or an authorised officer of the Secretary of State or of the Gambling Commission may disclose information to the Commissioners or to an authorised officer of the Commissioners for the purpose of assisting the Commissioners in the performance of duties in relation to lottery duty⁵. Information that has been disclosed to a person by virtue of these provisions must not be disclosed by him except to another person to whom, instead of to him, disclosure could have been so made, or for the purpose of any proceedings connected with the operation of any enactment in relation to lotteries or lottery duty⁶.

1 As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

2 For these purposes, references to the Secretary of State include any person who has been designated by the Secretary of State as a person to and by whom information may be disclosed under the Finance Act 1993 s 37: s 37(4). The Secretary of State must notify the Commissioners in writing if he designates a person under s 37(4): s 37(5). As to the Secretary of State see PARA 2.

3 As to the Gambling Commission see PARA 4.

4 Finance Act 1993 s 37(1) (s 37(1), (2) amended by the Finance Act 2007 Sch 25 Pt 3 paras 13, 15). As to lotteries generally see PARAS 317, 642-647, 659-664; as to the National Lottery see PARA 687 et seq; and as to the charge to lottery duty see PARA 789.

5 Finance Act 1993 s 37(2) (as amended: see note 4).

6 Finance Act 1993 s 37(3).